

2478

No. 11644

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

SAMPSON MOTORS, INC., a corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

AUG - 4 1947

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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In the District Court of the United States in and for the
Southern District of California
Central Division

No. 5503-PH Civil

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAMPSON MOTORS, INC., a corporation, and LOCK-
HEED AIRCRAFT CORPORATION, a corporation,
Defendants.

COMPLAINT FOR MONEY JUDGMENTS

The United States of America, plaintiff, by James M. Carter, its attorney for the Southern District of California, says that:

COUNT ONE

I.

Sampson Motors, Inc., is a corporation duly organized and doing business under and by virtue of the laws of the State of California, and having its principal office and place of business in the County of Los Angeles, California.

Lockheed Aircraft Corporation is a corporation duly organized and doing business under and by virtue of the laws of the State of California, and having its principal office and place of business in the County of Los Angeles, California. [2]

II.

Jurisdiction of this action is granted to the court by the provisions of Section 24, of the Judicial Code as

amended (28 U. S. C. 41[1]) and by the provisions of Section 403(c) of the Renegotiation Act.

III.

After due notice to defendant, Sampson Motors, Inc., proceedings for the renegotiation of said defendant's contracts and subcontracts were had and conducted by representatives of the Secretary of War. Thereafter, and on the 31st day of July, 1944, the Under-Secretary of War, acting under and by virtue of the Renegotiation Act and pursuant to authority delegated to him, duly determined, in accordance with law, that of the profits realized by said defendant during its fiscal year ended November 30, 1942, on its contracts and subcontracts subject to renegotiation, Sixty Thousand (\$60,000.00) Dollars were excessive profits. Demand was made upon the defendant for payment to the United States of such excessive profits, less the appropriate tax credit, if any. A full, true and correct copy of the order and determination of the Under-Secretary of War is attached hereto as Exhibit "A." and by this reference made a part hereof.

IV.

The tax credit to which defendant Sampson Motors, Inc., is entitled under Section 3806 of the Internal Revenue Code, is in the amount of Forty-two Thousand Eight Hundred Twenty-three and 67/100 (\$42,823.67) Dollars. This tax credit is computed upon the assumption that the profits determined to be excessive were returned as income by said defendant for tax purposes, and that the appropriate taxes have been or will be paid upon such profits.

V.

Defendant Sampson Motors, Inc., has not petitioned the Tax Court of the United States for a re-determination of

the amount of excessive profits received by it, as provided by Section 403(e) of the Renegotiation Act, and the period for filing such petition has expired. [3]

VI.

On October 6, 1944, the Under Secretary of War by a written order sent by mail to defendant, Lockheed Aircraft Corporation, directed said defendant, Lockheed Aircraft Corporation, to withhold for the account of the United States any and all amounts not in excess of \$9,000.00 which were otherwise due or should become due from said defendant, Lockheed Aircraft Corporation, to defendant, Sampson Motors, Inc.; thereafter on January 8, 1945, the Under Secretary of War by a written order sent by mail to defendant, Lockheed Aircraft Corporation, modified his aforesaid order dated October 6, 1944, by directing said defendant, Lockheed Aircraft Corporation, to withhold for the account of the United States any and all amounts not in excess of \$19,000.00 (instead of \$9,000.00 as originally specified) which were otherwise due or should become due from said defendant, Lockheed Aircraft Corporation, to defendant, Sampson Motors, Inc.; thereafter on May 9, 1945, the Under Secretary of War modified his aforesaid order dated January 8, 1945, by directing said defendant, Lockheed Aircraft Corporation, to withhold for the account of the United States any and all amounts not in excess of \$17,543.08 (instead of \$19,000.00 as originally specified by said order of January 8, 1945) which were otherwise due or should become due from said defendant, Lockheed Aircraft Corporation, to defendant, Sampson Motors, Inc. The net amount of said excessive profits less the tax credit aforesaid is the sum of \$17,176.33; plaintiff is entitled to recover from defendant,

Sampson Motors, Inc., interest at the rate of 6% per annum on said sum of \$17,176.33 and on the balances of said sum remaining from time to time due plaintiff; Lockheed Aircraft Corporation has withheld from defendant, Sampson Motors, Inc., at various times since October 6, 1944, various amounts aggregating \$17,543.08, all pursuant to and in accordance with the withholding orders aforesaid; the last date on which defendant, Lockheed Aircraft Corporation, withheld for the use of plaintiff monies otherwise due defendant, Sampson Motors, Inc., pursuant to said withholding orders was November 2, 1945; and that there is now due plaintiff from defendant, Sampson Motors, Inc., a balance of \$30.20 with interest at the rate of 6% per annum from November 2, 1945, [4] no part of which has been paid or otherwise eliminated.

COUNT TWO

VII.

Plaintiff by reference realleges each of the allegations set forth in paragraphs I, II, III, IV, V, and VI of Count One.

VIII.

Though defendant, Lockheed Aircraft Corporation, has been requested by plaintiff so to do, it has failed and refused and still refuses to pay to plaintiff the amounts it has so withheld.

Wherefore, plaintiff demands judgment as follows:

Against defendant, Sampson Motors, Inc., in the sum of \$30.20 with interest at the rate of 6% per annum from November 2, 1945.

Against defendant, Lockheed Aircraft Corporation, requiring that it render an account of all monies that have

become due from it to defendant, Sampson Motors, Inc., since its receipt of the withholding orders aforesaid, and that upon said account being stated defendant, Lockheed Aircraft Corporation, be required by the judgment of this Court to pay to the plaintiff the amount which defendant, Lockheed Aircraft Corporation, was required by the terms of said withholding orders to withhold for plaintiff's use.

JAMES M. CARTER

United States Attorney

RONALD WALKER

Assistant United States Attorney

Chief of Civil Division

ROBERT E. WRIGHT

Assistant United States Attorney

Attorneys for Plaintiff [5]

EXHIBIT "A"

WAR DEPARTMENT

OFFICE OF THE UNDER SECRETARY

Washington

DETERMINATION OF EXCESSIVE PROFITS

Pursuant to Section 403 of the Sixth Supplemental National Defense Appropriation Act, 1942, as amended, which term refers to said Act as last amended 14 July 1943 and as affected by Title VII of the Revenue Act of 1943 so far as applicable.

Whereas, Sampson Motors, Inc. (hereinafter referred to as the Contractor), holds contracts and subcontracts subject to renegotiation pursuant to the provisions of Section 403 of the Sixth Supplemental National Defense Ap-

propriation Act, 1942, as amended (hereinafter referred to as the Act); and

Whereas, renegotiation has taken place between the Under Secretary of War and the Contractor, pursuant to the provisions of the Act, for the purpose of eliminating excessive profits realized by the Contractor during its fiscal year ended 30 November 1942, under said contracts and subcontracts; and

Whereas, as a basis for said renegotiation the Under Secretary of War considered certain financial, operating and other data, submitted by the Contractor or obtained by the Under Secretary of War from governmental or other reliable sources, relating to the profits realized by the Contractor during said fiscal year under said contracts and subcontracts; and

WHEREAS, the Contractor has been granted full opportunity to submit such additional information and to present such contentions as the Contractor deemed material in determining the excessiveness of said profits and the renegotiability of such contracts and subcontracts, at hearings of which due notice was given, and due consideration has been given to the financial, operating and other data and information so furnished or obtained and each of the contentions so presented;

Now, Therefore, pursuant to the authority and discretion vested in the Secretary of War, the Secretary of the Navy, the Secretary of the Treasury, the Chairman of the Maritime Commission, the Administrator of the War [6] Shipping Administration, and the respective Boards of Directors of the Defense Plant Corporation, Metals Reserve Company, Defense Supplies Corporation and

Rubber Reserve Company under the provisions of the Act, and duly delegated to the Under Secretary of War under subsection (f) thereof, it is hereby found and determined:

That \$60,000 of the profits realized by the Contractor during its fiscal year ended 30 November 1942, under its contracts and subcontracts subject to renegotiation pursuant to the provisions of the Act, are excessive.

That in connection with the payment or discharge by any means of the amount of excessive profits determined hereby to have been realized by the Contractor, the Contractor shall be credited with any amount to which it may be entitled under Section 3806 of the Internal Revenue Code as computed by the Commissioner of Internal Revenue.

That the Contractor is directed to repay such excessive profits less such tax credit, if any, to the Treasurer of the United States.

That the excessive profits so found and determined shall be eliminated by any of the methods provided in the Act or any combination thereof; and the Commanding General, Army Service Forces, and the Commanding General, Army Air Forces, are hereby authorized and directed to take any and all action which may be necessary or desirable to effect such elimination.

ROBERT P. PATTERSON

Under Secretary of War

31 July 1944

24-55147ABC

[Title of District Court and Cause]

ANSWER OF DEFENDANT LOCKHEED
AIRCRAFT CORPORATION

To the Honorable the Judges of the District Court of the
United States in and for the Southern District of
California, Central Division:

Now comes Lockheed Aircraft Corporation, a corporation, one of the defendants herein, and for and on behalf of itself and for no other party, in answering plaintiff's complaint on file herein admits, denies and alleges as follows:

COUNT ONE

I.

Answering paragraph I of Count One of said complaint on file herein defendant Lockheed Aircraft Corporation admits that it is a corporation duly organized and doing business under and by virtue of the laws of the State of California and has its principal office and place of business in the County of Los Angeles, State of California. Other than heretofore admitted, this defendant has no information or belief sufficient to enable it to answer the allegations contained in said paragraph I of said Count One of plaintiff's [8] complaint on file herein and on said ground denies each and every and all of the allegations in said paragraph contained.

II.

Answering paragraph II of Count One of plaintiff's complaint on file herein, defendant Lockheed Aircraft Corporation admits the allegations in said paragraph contained.

III.

Answering paragraphs III, IV and V of Count One of plaintiff's complaint on file herein, defendant Lockheed Aircraft Corporation has no information or belief sufficient to enable it to answer the allegations in said paragraphs of said Count One of plaintiff's complaint on file herein and on said ground denies each and every and all of the allegations in said paragraphs contained.

IV.

Answering paragraph VI of Count One of plaintiff's complaint on file herein, this defendant admits that on or about October 12, 1944, it received a written order from the Under Secretary of War directing this defendant to withhold for the account of the United States any and all amounts not in excess of \$9,000.00 which were otherwise due or should become due from this defendant to defendant Sampson Motors, Inc. This defendant further admits that on or about January 13, 1945, this defendant received a written order dated January 8, 1945, from the Under Secretary of War directing this defendant to withhold for the account of the United States any and all amounts not in excess of \$19,000.00 which were otherwise due or should become due from this defendant to the defendant Sampson Motors, Inc. This defendant further admits that on or about May 18, 1945, this defendant received a written order dated May 9, 1945, modifying the aforesaid directive of the Under Secretary of War dated January 8 1945, whereby this defendant was ordered to withhold

for the account of the United States any and all amounts not in excess of \$17,543.08 which were otherwise due or should become due from this defendant to defendant Sampson Motors, Inc. This defendant further admits that pursuant to the aforesaid directives of the Under Secretary of War, this defendant has withheld from defendant Sampson Motors, Inc., the sum of \$17,556.54, in such amounts and on such divers dates as indicated in the [9] attached Schedule of Amounts Withheld, which said schedule is marked Exhibit "A" and by this reference incorporated herein and made a part hereof. Save and except as heretofore admitted, this defendant has no information or belief sufficient to enable it to answer the allegations contained in paragraph VI of Count One of plaintiff's complaint on file herein and on said ground denies each and every and all of the allegations in said paragraph contained.

COUNT TWO

V.

Answering paragraph VII of Count Two of plaintiff's complaint on file herein, this defendant reallages the admissions, denials and allegations set forth in paragraphs I, II, III and IV of Count One hereof and by this reference incorporates the same herein as though fully set forth at this place.

VI.

Answering paragraph VIII of Count Two of plaintiff's complaint on file herein, this defendant admits that it has

refused to pay to plaintiff the amounts it has withheld from defendant Sampson Motors, Inc., as aforesaid and in this connection this defendant is informed, and believes, that said amount of \$17,556.54, and the whole thereof, which this defendant has withheld from defendant Sampson Motors, Inc., as aforesaid, is claimed by the said defendant Sampson Motors, Inc.

This defendant further alleges that it has no interest in or claim to the said sum of \$17,556.54, or any part thereof, but will continue to withhold the said sum, and the whole thereof, pursuant to said directives as aforesaid and until otherwise ordered by this court or other competent authority.

Wherefore, This Defendant Prays:

That this court make its order directing the disposition of the funds withheld by this answering defendant as hereinabove in paragraph VI described and that this action be dismissed against this defendant and that this defendant have and recover its costs incurred herein.

ROGER B. SMITH

EMIL STECK, JR.

ROBERT H. CANAN

MARK E. TRUE

By Mark E. True

Attorneys for Defendant Lockheed Aircraft
Corporation. [10]

EXHIBIT "A"
SCHEDULE OF AMOUNTS WITHHELD

Posting	Invoice	Invoice	Lockheed Liability	
<u>Date</u>	<u>Date</u>	<u>Number</u>	<u>Number</u>	<u>Amount</u>
10-11-44	8- 4-44	3824	408-15315	\$ 1,137.18
10-23-44	10-13-44	4036	410-24983	277.52
10-30-44	9-19-44	3979	409-35752	1,140.00
11- 9-44	10-16-44	4042	410-28715	1,070.40
11-25-44	11-30-44	2643	410-14837	2,472.00
11-28-44	11-20-44	4166	412- 3180	1,422.15
12- 4-44	10-10-44	4026	410-24895	660.00
1- 6-45	12-19-44	4274	412-35158	284.00
1- 9-45	12-19-44	4286	412-35159	253.25
1-12-45	12- 4-44	4200	412-15210	277.52
1-12-45	12-26-44	4312	412-39802	2,542.20
3-16-45	3-12-45	4685	503-25909	924.99
3-17-45	3-14-45	4686	503-27736	808.00
3-17-45	3-14-45	4687	503-27737	975.73
3-17-45	3-14-45	4688	503-27738	997.24
3-27-45	3-21-45	4753	503-40903	1,254.60
4-10-45	4- 5-45	4866	504-14751	819.92
8-31-45	8-22-45	CANCL	509- 4388	219.79
11- 2-45	10-15-45	CANCL	511- 2992	20.05
6- 6-46	5-31-46	5946	606- 7086	83.76
7- 8-46	7- 2-46	LAC D/M 36531	607- 2808	83.76

Total

\$17,556.54

[11]

[Verified.]

Receipt of copy of Answer acknowledged this 30 day of July, 1946. James M. Carter, United States Attorney, Ronald Walker and Robert E. Wright, Assistant United States Attorneys, Attorneys for Plaintiff. By James M. Carter, U. S. Atty. By Gertrude M. Johnson.

[Endorsed]: Filed Jul. 30, 1946. [12]

[Title of District Court and Cause]

ANSWER OF SAMPSON MOTORS, INC.,
A CORPORATION

Comes now the defendant, Sampson Motors, Inc., a corporation, and in answer to the complaint in the above entitled action admits, denies and alleges as follows:

I.

Answering Count One, Paragraph I, admits that this defendant is a corporation duly organized and existing under the laws of the State of California with its principal place of business in the County of Los Angeles, State of California.

II.

Answering Count One, Paragraph II, admits that jurisdiction of this action is granted to the above entitled court as in said paragraph alleged.

III.

Answering Count One, Paragraph III, admits that on or [13] about the 3rd day of August, 1944, it received a purported notice, a true copy of which is set forth and attached as Exhibit "A" to plaintiff's complaint. Denies each and every other allegation in said Paragraph III contained and specifically denies that proceedings were initiated or conducted in accordance with the Renegotiation Act; denies that there was a determination in accordance with law or in accordance with said Act, and denies that any profits realized by this defendant

during its fiscal year ended November 30, 1942, were excessive in the sum of \$60,000.00 or in any sum whatsoever under the provisions of said Act or otherwise; denies that the representatives of the Secretary of War or the Under-Secretary of War acquired any jurisdiction over this defendant under the provisions of the Renegotiation Act.

IV.

Answering Count One, Paragraph IV, admits that defendant is entitled to credit for taxes paid as therein alleged, but in this connection denies that any excess profits in any amount were realized by this defendant or properly determined under the Renegotiation Act.

V.

Answering Count One, Paragraph V, admits that this defendant has not petitioned the Tax Court of the United States for redetermination of any excessive profits claimed to have been received by it under the Renegotiation Act, but denies that the period for filing such petition has expired by reason of the lack of jurisdiction over this defendant as hereinbefore alleged.

VI.

Answering Count One, Paragraph VI, admits that Lockheed Aircraft Corporation has withheld from payment to this defendant the sum of \$17,556.64 which is due and payable to this defendant and in this connection alleges that said sum is now due and payable to this defendant and is the property of this defendant. [14] De-

defendant is without sufficient information or belief to answer the remaining allegations of said Paragraph VI, and basing its denial upon such lack of information or belief denies each and every other allegation in said paragraph contained.

VII.

Answering Count Two, Paragraph VII, defendant re-alleges its answers hereinabove set forth to Paragraphs I, II, III, IV, V and VI of Count One.

VIII.

Answering Count Two, Paragraph VIII, defendant is without sufficient information or belief to answer the allegations therein contained, and basing its denial upon such lack of information or belief, denies each and every allegation in said paragraph contained.

For a further separate and second defense to plaintiff's complaint, defendant alleges:

I.

That all proceedings and acts purported to have been taken by plaintiff, its agents or representatives in the re-negotiation of this defendant for the fiscal year ended November 30, 1942, were without jurisdiction; in excess of the jurisdiction allowed by law; and in violation of the Constitution of the United States and particularly Article V of the Amendments to the Constitution in depriving defendant of its property without due process of law.

Wherefore, defendant prays that plaintiff take nothing by its action; that it be adjudged that the sum of \$17,-

556.64 held by Lockheed Aircraft Corporation is the property of this defendant; and for such other and further or different relief as the court deems equitable and just in the premises.

ROBT. E. ROSSKOPF,
Attorney for Defendant Sampson Motors, Inc., a corporation. [15]

[Verified.]

Receipt of copy of the within Answer acknowledged this 11th day of October, 1946. James M. Carter, United States Attorney; Ronald Walker, Assisant United States Attorney; Robert E. Wright, Assistant United States Attorney; by Robert E. Wright, Attorneys for Plaintiff.

[Endorsed]: Lodged Oct. 11, 1946. Filed Oct. 28, 1946. [16]

[Title of District Court and Cause]

STATEMENT OF ISSUES AND OFFER OF
PROOF

Action is by United States of America against Lockheed and Sampson to recover funds withheld by Lockheed from payment to Sampson Motors, Inc. on its subcontracts, pursuant to order by the Secretary of War, based on a unilateral determination of excess profits for the fiscal year ended November 30, 1942.

Renegotiation was started about November 15, 1943 by Army Air Forces, Western Procurement District. Books and records of Sampson Motors were made available to Air Force auditors. Prior to any hearing Air Force

officer verbally advised Sampson that he considered excess profits for said fiscal year, prior to deduction for taxes, to be \$60,000.00. Following this verbal notification on May 24, 1944 the Air Forces advised Sampson by registered mail that [17] it desired to avail Sampson,

“of the privilege of presenting to them any factors pertinent to the renegotiation of your fiscal year ended 30 November 1942, inasmuch as the settlement proposed to you has not been accepted by you.”

“The District Board has reserved the afternoon of Monday, 29 May 1944, to meet with you at District Headquarters, 3636 Beverly Boulevard, Los Angeles, California.”

The president of Sampson Motors, with his counsel, was present at said time and place but was refused the privilege of introducing any evidence to show price reduction and comparative prices; efficiency in reducing costs; economy in the use of raw materials; efficiency in the use of facilities in the conservation of manpower; character and extent of subcontracting; quality of production; rate of delivery and turnover; inventive and developmental contribution with respect to important war products. At said meeting the Army Air Force officers advised the Sampson representatives that it had secured all the information it desired for determining said excess profits and did not wish to receive any evidence from the contractor, but insisted that the contractor execute an agreement agreeing to a determination of excess profits in the sum of \$60,000.00, failing which the matter would be recommended to the Secretary of War for fixing of said amount. The contractor declined to execute such agreement but

urged the right to introduce evidence concerning the figures above mentioned, which evidence was refused.

Thereafter on or about June 19, 1944 Sampson received a wire from the Chief, Renegotiation Branch of the War Department, Office of the Secretary, as follows:

“Renegotiation impasse your company with Army Air Forces referred to this board. Under- [18] stand there is no material disagreement as to reported facts and figures and inability reach agreement due solely to amount of proposed refund. Careful review and consideration reports covering case indicate settlement fair and equitable. Should you consider further hearing desirable with board representatives in Washington meeting can be arranged for ten A.M., 29 June 1944, Room 3D 573, The Pentagon. In event this date inconvenient please advise by telephone or telegraph your choice not later than ten days thereafter. If meeting not deemed necessary no alternative but to submit case to under secretary of war for determination. Please advise by 26 June SPRAR.”

At that time all transportation was on a strict priority basis making it virtually impossible to secure private transportation from Los Angeles to Washington, D. C. The urgency of the war program and the necessity for products being manufactured by the contractor was also such that absence from the business of Mr. Brett, the only person familiar with the matters involved in renegotiation, would have seriously impaired production of vital war materials. The contractor replied to the above wire on or about June 20, 1944 as follows:

"There is no impasse. No determination or basis of claim for refund or settlement ever been presented. Local Board refused to allow us to present facts under Sec. 403 A (4) (A) so it is impossible for you to have all facts.

"Attendance in Washington is unreasonable as it would stop our entire production of essential Aircraft Parts that I have agreed to manufacture." [19]

The contractor thereafter received a letter bearing date 29 June 1944 as follows:

"In accordance with our telegram to you of 19 June 1944, inasmuch as it has not been possible to work out an agreement as to the requested refund of \$60,000 excessive profits for the year ended 30 November 1942, we are recommending that this case be submitted to the Under Secretary of War for his consideration."

Thereafter the contractor received letter bearing date July 31, 1944 from the Under Secretary of War enclosing a unilateral determination of excess profits to be \$60,000.00. The text of said letter was as follows:

"I have reviewed the data furnished by your company and the proceedings in connection with your 1942 renegotiation with the War Department Price Adjustment Board and have reached the conclusion that the proposal heretofore made to your company by the War Department Price Adjustment Board should be affirmed. I have therefore made a unilateral determination that \$60,000 of the prices and profits realized by Sampson Motors, Inc., during its fiscal

year ended 30 November 1942, under its contracts and subcontracts subject to renegotiation pursuant to the provisions of Section 403, are excessive. An executed original of such unilateral determination is inclosed herewith."

Thereafter the contractor received a letter bearing date 16 September 1944 from the office of the Under Secretary, War Department, advising that the Internal Revenue Agent at Los Angeles had computed the tax credit and that the contractor was entitled to a [20] tax credit against said excess profits in the sum of \$42,823.67 and requesting payment by transmittal of the difference of \$17,176.33.

The contractor declined to transmit such difference, following which the Under Secretary of War directed Lockheed Aircraft Corporation to withhold payment to the contractor. The withholding directions to Lockheed were under date of October 12, 1944 instructing it to withhold \$9,000.00; on January 8, 1945 changing the amount to \$19,000.00; and on May 9, 1945 changing said amount to read \$17,543.08. Pursuant to these directions Lockheed withheld payment to the contractor of the various invoices and purchase orders in the total sum of \$17,-556.54, which said amount it still holds.

Sampson had no prime contracts direct with the government but all of its war business was under purchase orders from prime and subcontractors. Some of said purchase orders contained the provision that "seller accepts this order subject, if applicable, to renegotiation pursuant to the provisions of Section 403, Sixth, Supplemental National Defense Appropriation Act of 1942."

The Renegotiation Act of 1942, Section (c) (1), provided that:

“Whenever, in the opinion of the Secretary of a Department, the profits realized or likely to be realized from any contract with such department, or from any subcontract thereunder whether or not made by the contractor, may be excessive, the Secretary is authorized and directed to require the contractor or subcontractor to renegotiate the contract price.”

It further provided by Section (c) (2) that the Secretary is authorized and directed to eliminate any excessive profits by [21] withholding, from amounts otherwise due to the contractor or subcontractor, any amount of such excessive profits. Said section also provided that the Secretary may bring actions in appropriate courts of the United States to recover any amount of such excessive profits. The 1942 Act contained no provision for appeal or review, and no provision against appeal or review. Under the Act, as worded, it would appear that the sole remedy for recovery of such excessive profits would be a court action, in which action the court would review the action of the Secretary and determine whether or not the Secretary's determination was fair and reasonable.

The 1943 amendments to the Act added Section (e) and provided that any contractor or subcontractor aggrieved by a determination of the Secretary made prior to the enactment of the 1943 Act with respect to a fiscal year ending before July 1, 1943,

“May, within ninety days * * * after the date of the enactment of the Revenue Act of 1943, file a petition with the tax court of the United States for a renegotiation thereof.”

Said amendment further provided that,
“upon such filing”

the court would have the same jurisdiction and the proceedings would be subject to the same provisions as those applicable to the 1943 Act.

Section 5 of the 1943 Act provided that the amendments of Section (e) should be effective as of April 28, 1942.

It is the contractor's contention here that under the Act as it existed in 1942 any action by the Secretary in determining excessive profits was subject to review in this court. The provisions in the 1943 amendment extending a permissive appeal to the tax court on a 1942 renegotiation was by its terms permissive only, and unless the contractor chose to take such appeal he was not bound [22] by any action of the tax court and his rights were not prejudiced by any failure to take such appeal. By the terms of the 1943 amendment the tax court only obtained jurisdiction of the matter if the contractor chose to appeal to such court. The statute did not provide that if the contractor did not take such appeal he would be precluded from a court determination as contemplated by the 1942 statute.

It is also the contractor's position that it was denied due process as guaranteed by the Constitution in that it was denied a hearing and the right to produce evidence before the Air Force Branch in Los Angeles, and that ten days' notice requiring its appearance in Washington was unreasonable in view of the circumstances and conditions which pertained at that time. The contractor, therefore, contends that he has not been renegotiated and that he is entitled in this proceeding to have the matter of excess profits for said fiscal year determined.

The contractor hereby offers to prove all of the facts herein set forth.

Contractor further offers to prove that the amount of \$60,000 as a determination of excess profits for the fiscal year ended 1942 is excessive and unreasonable. Contractor offers to prove that by its operations the government received substantial price reductions and that the prices of Sampson Motors, Inc. were substantially below the prices of other contractors and subcontractors for like products in this area; that the contractor had a very high degree of efficiency in reducing the costs of its products to the government; that the contractor was more economical in the use of raw materials than other contractors in the area; that in the use of facilities and conservation of manpower the efficiency of contractor was far above the average of any other contractor in this area; offers to show the character and extent of subcontracting used by it; that the quality of contractor's production was of the [23] very highest and superior to the average quality of other contractors in this area; that the contractor's rate of delivery and turnover was highly efficient; and that the contractor developed in its shop a number of manufacturing processes which substantially increased the efficiency and volume of its war production, which processes were made available to the United States agencies and to other contractors engaged in similar production.

Respectfully submitted,

ROBT. E. ROSSKOPF,

Attorney for Defendant Sampson Motors, Inc.

[SAMPSON'S EXHIBIT A.]

Excerpt from Report to Western District

Machine Tool Report

ASU-29A—Sampson Motors, Inc

EPS/nl

February 19, 1943

AAF Resident Representative

Vernon Sub-Area Office

2835 Santa Fe Avenue

Los Angeles, California

1. The attached subject ASU-29A forms were forwarded to this office in error. Information is furnished below which might be of benefit in determining the justification of this *prurchase*.

2. A visit to this shop and a study of its present equipment will show conclusively that it will be impossible to produce for Lockheed Aircraft Corporation fourteen gun chargers per day. Sampson Motors, Inc. are able to send to Lockheed Aircraft Corporation at this time from seven to nine gun chargers per day and will guarantee only seven, but expect to send Lockheed nine gun chargers per day. The slightest mixup in man power or the failure of a machine would cause a shutdown on the P-38 line.

3. This office feels that any assistance given to the Sampson Motors, Inc. would be of much benefit to the Lockheed Aircraft Corporation.

4. Outside Production informs this office that in a change of vendors from the Interstate People to the Samp-

son Motors, Inc., a saving was made in the making of these gun chargers of \$75,000 and the work of the Sampson Motors, Inc. is "A-1 Plus" with a record of not one rejection occurring in their total output.

5. Since Lockheed Aircraft Corporation needs fourteen gun chargers per day, a record of a few days' shipments will be of interest: 2/4/43—9, 2/5/43—7, 2/6/43—11, 2/8/43—7, 2/9/43—9, 2/10/43—10, 2/11/43—10.

a. This you will note is an average of nine per day.

6. If further information is desired by your Area in regard to purchase of this machinery, it is requested that you contact Mr. E. P; Smith of this office.

For the Army Air Forces Resident Representative:

PAUL R. SEABURY
Major, Air Corps
Asst. AAF Resident
Representative

3 Incls.—

Incl. 1— [25]

Case No. 5503-PH. U. S. A. vs. Lockheed. Deft. Exhibit A. Date Feb. 6, 1947. No. A identification. Date Feb. 6, 1947. No. A in evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. J. M. Horn, Deputy Clerk. [26]

[SAMPSON'S EXHIBIT B.]

SAMPSON MOTORS, INC.

AUDIT REPORT

NOVEMBER 30, 1942

MARTIN J. MASTERS

Certified Public Accountant

Los Angeles [27]

Exhibit "A"

SAMPSON MOTORS, INC.

BALANCE SHEET

NOVEMBER 30, 1942

ASSETS

CURRENT ASSETS

Cash on hand and in bank	\$ 16,667.79
Accounts Receivable, trade	32,804.97
Inventories of raw materials and work in process	13,515.94
	<hr/>
Total Current Assets	\$ 62,988.70

FIXED ASSETS

Land	\$ 7,297.06
Buildings	24,267.17
Machinery and equipment	108,247.88
Office furniture and equip- ment	2,273.80
	<hr/>
Total	\$142,085.91

Less: Reserves for depreciation	32,405.50	
---------------------------------	-----------	--

Total Fixed Assets		109,680.41
--------------------	--	------------

PREPAID EXPENSES, ETC.

Unexpired Insurance	\$ 1,361.53	
Deposits	47.20	1,408.73

TOTAL		\$174,077.84
-------	--	--------------

[28]

LIABILITIES AND CAPITAL

CURRENT LIABILITIES

Long term indebtedness, payable within one year Trust

Deed Note	\$ 1,558.20	
Chattel Mortgage Note	8,749.92	\$ 10,308.12

Equipment, purchase contracts	3,245.28
-------------------------------	----------

Notes Payable	3,000.00
---------------	----------

Accounts Payable, trade	5,059.93
-------------------------	----------

Due to Officers	1,847.61
-----------------	----------

Federal State and Local Taxes payable	2,915.33
---------------------------------------	----------

Federal Income and Excess Profits Tax, estimated	75,000.00
--	-----------

Accrued Liabilities, payroll, Interest, etc.	991.43
--	--------

Total Current Liabilities	\$102,367.70
---------------------------	--------------

LONG TERM INDEBTEDNESS

Trust Deed Note	\$ 8,491.57	
Chattel Mortgage Note	5,962.60	
	<hr/>	
Total	14,454.17	
Less: Amounts payable within one year included in current liabilities above	10,308.12	4,146.05
	<hr/>	

CAPITAL

Capital Stock issued (6950 Shares, par value \$1.00)	6,950.00	
Capital Surplus	54,519.60	
Earned Surplus	51,094.49	
	<hr/>	
Total	112,564.09	
Less: Treasury Stock (3545 shares)	45,000.00	67,564.09
	<hr/>	

174,077.84

[29]

Exhibit "B"

SAMPSON MOTORS, INC.

STATEMENT OF PROFIT AND LOSS ACCOUNT
FOR THE YEAR ENDED NOVEMBER 30, 1942.

SALES, LESS RETURNS AND ALLOWANCES		\$283,351.11
COST OF GOODS SOLD		
Inventory at beginning of year	\$ 7,135.46	
Direct Labor	52,367.87	
Materials purchased	9,632.78	
Outside processing	31,584.91	
Manufacturing expense (Schedule 1)	63,308.91	
Total	164,029.93	
Less: Inventory at end of year	13,515.94	
Cost of Goods Sold		150,513.99
GROSS PROFIT ON SALES		132,837.12
ADMINISTRATIVE EX- PENSE (Schedule 1)		23,782.25
PROFIT FROM OPERATIONS		109,054.87
OTHER INCOME		
Miscellaneous, sale of scrap, etc.	2,331.60	
Discounts Earned	174.39	
Profit on Sale of Equipment	1,056.43	3,562.42
NET PROFIT BEFORE INCOME AND EXCESS PROFITS TAXES		\$112,617.29

SCHEDULE 1.

SAMPSON MOTORS, INC.

STATEMENT OF MANUFACTURING AND ADMINISTRATIVE FOR THE YEAR ENDED NOVEMBER 30, 1942.

MANUFACTURING EXPENSES

Manager's Salary (R. J. Brett)	\$ 17,544.03
Engineer's Salary	3,889.47
Other Labor	3,967.92
General Supplies and Repairs	11,895.00
Heat, Light and Power	1,182.09
Engineering Expense	321.97
Laundry	230.65
Depreciation	22,373.43
Compensation Insurance	582.15
Miscellaneous	1,322.20
	<hr/>
	\$ 63,308.91
	<hr/> <hr/>

ADMINISTRATIVE EXPENSES

Officer's Salary	4,818.90
Office Salaries	3,115.05
Stationery and Office Supplies	553.10
Auto and Delivery Expense	144.79
Travel and Entertainment	594.70
Telephone	592.33
Depreciation	423.95
Payroll Taxes	2,688.17
Other Taxes	5,839.03
Professional services	1,768.90
Insurance	595.08
Miscellaneous	798.73
Interest Paid	1,849.02
	<hr/>
	\$ 23,782.25
	<hr/> <hr/>

MARTIN J. MASTERS
Certified Public Accountant
117 West Ninth Street
Los Angeles
VAndike 5646

March 1, 1943.

Sampson Motors,
1950 W. 62nd Street,
Los Angeles, Calif.

Gentlemen:

We have made an examination of the books and records of Sampson Motors, Inc. for the year ended November 30, 1942 and as a result thereof submit the accompanying statements which set forth the financial position of the company at November 30, 1942 and the results of its operations for the year ended that date.

Capital and surplus at the close of the year amounted to \$67,564.09 after making provision for federal income and excess profits taxes in the estimated amount of \$75,000.00. Net profit from operations, before federal taxes, is shown in the amount of \$112,617.29.

In our opinion the accompanying balance sheet and related statement of profit and loss account set forth, fairly, the financial position of the company at November 30, 1942 and the results of its operations for the year then ended.

Yours very truly,
Martin J. Masters

Case No. 5503-PH. U. S. A. vs. Lockheed. Deft. Exhibit B. Date Feb. 6, 1947. No. B identification. Date Feb. 6, 1947. No. B in evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. J. M. Horn, Deputy Clerk. [32]

[SAMPSON'S EXHIBIT C]

Case No. 55-8-211
2-16 vs. Sampson
 EXHIBIT C
 Date Feb 8 - 1947 No. C IDENTIFICATION
 Date Feb 8 - 1947 No. C IN EVIDENCE
 Clerk J. J. District Court, Sou. Dist. of Calif.
J. J. District Court, Sou. Dist. of Calif. Deputy Clerk

LOCKHEED AIRCRAFT CORPORATION

BURBANK, CALIFORNIA SERIAL 6198

OUTSIDE PRODUCTION-PURCHASE ORDER

PAGE PURCHASE ORDER NO. OF

8-20560 DATE

ITEM	QUANTITY	SCHEDULE DATES	MANUFACTURING DATES	ITEM	MODEL	CONTRACT	PREP. NO.
1 - 70		JUNE 30 1947	11-1-149	P38E		DEFENSE ORDER ARMY W-535	

CAMPBELL MOTORS INC.
 1950 W. 62ND STREET
 LOS ANGELES, CALIFORNIA

79902

SHIP TO	DELIVER TO	ACKNOWLEDGEMENT AND DUPLICATE INVOICES REQUIRED	PACKING LISTS MUST ACCOMPANY EACH CASE OR PARCEL SHOWN OUR ORDER NUMBER AND COMPLETE DESCRIPTION OF THE CONTENTS

QUANTITY	UNIT	ITEM	DESCRIPTION	(WORK ORDER NUMBER)	PRICE
			<u>ENGINE AND ACCESSORY TEST BLUEPRINTS:</u>		
77	ONLY	227153	30" DIA. (21-1912-71)		10-617
					10-664
					10-753
					40-810
			<u>MATERIAL FURNISHED BY LOCKHEED:</u>		
101-11	FT.	3051530	3/16" DIA. 4150 STL. BAR R		
70	FT.	3201130	3/8" DIA. 1000 STL. BAR R		
			<u>TOOLS FURNISHED BY LOCKHEED:</u>		
			<u>PREVIOUSLY DELIVERED:</u>		
			<u>REQUIREMENTS FURNISHED BY LOCKHEED:</u>		
			<u>PREVIOUSLY DELIVERED:</u>		

FOR RESALE

The work on this order is subject to Lockheed Specifications governing Materials, Parts, and Processes. Receipt of a copy of the applicable portions of such specifications is hereby acknowledged. The requirements set forth by such specifications supersede the general information furnished on Lockheed blueprints unless a specific deviation is requested by Lockheed in which event such requested deviation shall control. Additional copies of the applicable specifications will be supplied upon request to the Outside Production Department.

The instructions, agreements and conditions on the reverse side are also made part of this order to which the Subcontractor agrees by acceptance of this order.

SUBCONTRACTOR

J E BLAINE, Outside Production Manager

By

Harold W. Bulmer

INSTRUCTIONS, AGREEMENTS AND CONDITIONS:

(For the purpose of this contract Lockheed Aircraft Corporation as the Contractor will be referred to herein as "Lockheed" and the Vendor or Supplier will be referred to herein as "Subcontractor.")

1. Acknowledgment Necessary. This order shall not be effective nor shall Lockheed be obliged to pay any monies called for hereunder unless and until Subcontractor shall have supplied Lockheed with the written acknowledgment and acceptance hereof. No conditions laid down by Subcontractor in accepting or acknowledging this order shall be binding upon Lockheed if in conflict with any instruction, agreement and/or condition herein stated unless expressly accepted by Lockheed in writing. No revisions to this order shall be valid unless in writing and signed by an authorized representative of the Lockheed Outside Production Department.
2. Boxing Charges. No charges shall be made for boxing, wrapping or cartage unless noted on this order.
3. Inspection. All materials or articles ordered will be subject to final inspection and approval at destination by Lockheed or its duly authorized representative. Where a specification number is noted for supplies ordered, Subcontractor must supply in triplicate a notarized report confirming manufacture of materials to the specification and such report must accompany materials upon delivery. This report must bear Lockheed's Purchase Order number and description of the materials shipped. Subcontractor shall furnish Ameri-

can materials in accordance with U. S. War Department Circular of March 13, 1933. Lockheed reserves the right to reject and hold, subject to Subcontractor's disposal, all materials not conforming to specifications. All merchandise fabricated by Subcontractor which may be rejected by Lockheed due to Subcontractor's fault or cause of failure to meet specifications shall be replaced by Subcontractor at its cost as to material and time. Subcontractor will be charged costs of materials or tools damaged while in its possession. Any merchandise which may be rejected because of Lockheed's fault or change in engineering or design occasioned by Lockheed shall be reworked at Lockheed's expense.

4. Shipping Instructions. Each container must be marked to identify contents without opening. Forward notice of shipment the same day shipments are made. All Bills of Lading (or Express Waybills) must show Lockheed's Purchase Order number and a copy must be sent to Lockheed's Traffic Department with a copy of packing list via airmail on day of shipment. Express shipments f.o.b. Subcontractor's plant to be released at a valuation not to exceed \$50.00 if under 100 lbs.; if over 100 lbs., not to exceed 0.50 per lb. Show Lockheed's Purchase Order number on all invoices, packing slips and correspondence relative to this order.
5. Patent Protection. Subcontractor guarantees that the sale or use of any or all articles or material delivered hereunder will not infringe any United States Patent; that he will at his own expense defend any action, suit or claim in which an infringement of Patent

Rights is alleged with respect to the sale or use of said articles or materials, and that he will save the Lockheed Aircraft Corporation and/or its customers from any loss, damage or liability which may be incurred on account of infringement or alleged infringement of Patent Rights with respect to the articles or material delivered unless said articles or materials are produced in accordance with Lockheed designs or specifications.

6. Confidential. The Subcontractor shall not disclose any details connected with the order to any third party except as herein specified without first obtaining the written consent of the Lockheed Aircraft Corporation.
7. Tools And Materials. The Subcontractor is to furnish all standard tools, taps, dies, cutters, gauges, and fixtures. Lockheed will furnish special tools for the Subcontractor's convenience where these are available, but it is expressly understood that in so doing Lockheed makes no guarantee whatsoever as to the accuracy of the tools furnished. By the acceptance of this order, the Subcontractor agrees to furnish the items ordered in accordance with drawings and applicable specifications. No designs, tools, patterns, or drawings supplied by Lockheed to the Subcontractor for use in manufacture of articles contracted for herein shall be used in the production, manufacture or design of any other articles for any other purchaser nor for the manufacture or production of

larger quantities than those specified except with the express consent in writing of the Lockheed Aircraft corporation. At the termination of this contract they, together with all excess materials, shall be disposed of as Lockheed shall direct. All such designs, tools, patterns, drawings and materials supplied by Lockheed shall be segregated by the Subcontractor in the Subcontractor's plant and, wherever possible, clearly marked so as to be easily identified as Lockheed's property. Where materials are furnished by Lockheed, title to such material in all stages of construction shall be and remain in the Lockheed Aircraft Corporation.

8. Insurance, Risk Of Loss And Status Of Seller. All materials, tools, designs, patterns and drawings belonging to Lockheed and located in the State of California shall be at Subcontractor's risk from loss or damage from all hazards, except that Lockheed, for Lockheed's sole benefit shall insure such materials, etc. against loss or damage resulting from fire, lightening, cyclone, tornado, windstorm and hail, explosion, earthquake, aircraft or vehicles, smoke, sprinkler leakage, flood, strike, riot and civil commotion, and vandalism and malicious mischief, but such insuring shall not relieve Subcontractor from liability for Subcontractor's negligent acts or omissions. All such materials, etc., while in Subcontractor's possession outside of the State of California shall be at Subcontractor's sole risk

from all hazards. In the event that Subcontractor is required to enter premises owned, leased, occupied by or under the control of Lockheed during the performance of services ordered hereunder or during delivery or installation of the materials or articles herein contemplated or during the performance of services otherwise required to be furnished by Subcontractor, Subcontractor agrees that Subcontractor will, before coming upon such premises, obtain and keep insurance coverage indemnifying and holding harmless Lockheed, its officers and employees, from any liability or loss by reason of property damage or personal injury of whatsoever nature or kind occurring during or as a result of the performance of such services and/or delivery and/or installation. Such insurance shall be in standard form for property damage and public liability and in reasonable limits. Subcontractor agrees to furnish Lockheed with certificates or other satisfactory evidence of such insurance coverage prior to such entry. Failure of Lockheed to demand such certificates or other evidence shall not constitute a waiver of the foregoing agreements. Subcontractor agrees to carry proper workmen's compensation for Subcontractor's own employees. Subcontractor understands and agrees that in performing this order Subcontractor is and for all purposes will be deemed to be an independent contractor and that neither Subcontractor nor any employee of Subcontractor shall be or be deemed to be an employee of Lockheed.

9. Compliance With Governmental Regulations. Subcontractor warrants and certifies that all goods herein specified have been and will be produced in compliance with applicable provisions and stipulations of the Walsh-Healy Act (Public Act No. 846, 74th Congress), the U. S. Fair Labor Standards Act (Public Act No. 718, 75th Congress), the Espionage Act (Public Act No. 443, 76th Congress), Section 1 of the Act of January 12, 1938 (52 Stat. 3), Executive Order No. 8381 and the Act of June 28, 1940 (Bull No. 15, W. D. 1940) and that only citizens of the United States have been and will be employed in the manufacture or furnishing of the material or equipment herein specified. Subcontractor, in performing this order, shall not discriminate against any worker because of race, creed, color or national origin.
10. United States Air Corps And Navy Department Specifications. All materials or equipment for aircraft construction listed herein to which the United States Air Corps and United States Navy Department specifications are applicable must comply with such specifications current as of the date of this order. Should such specifications be revised prior to shipment, Subcontractor, by first obtaining written consent of Lockheed, may furnish such material or equipment in accordance with revised specifications.
11. No Assignment. Subcontractor may neither assign this contract nor any monies to become due under it without first obtaining the written consent of the Lockheed Aircraft Corporation.

12. Cancellation. Lockheed reserves the right to cancel this order if not filled in accordance with delivery schedule and specifications. In the event of any suspension of payment or the institution of any proceedings by or against either party, voluntary or involuntary, in bankruptcy or insolvency, or under any provisions of the United States Bankruptcy Act, or for the appointment of a receiver or trustee or an assignee for the benefit of creditors, of either party, or in the event of a breach of any of the terms hereof, including warranties of subcontractor, the other party shall be entitled to cancel this contract forthwith.
13. General Warranties. Subcontractor warrants the articles herein specified to be free from defects in labor, materials or fabrication. All warranties shall be construed as conditions as well as warranties, and the representations and conditions herein contained shall not be deemed to be exclusive.
14. Construction. This order is designed for use in the purchase by Lockheed of services or property or both. Any portion not applicable to the purchase of the thing ordered shall be deemed mere surplusage, but Subcontractor agrees that Lockheed's determination of what is and what is not applicable shall be final and binding. Each instruction shall be construed as also being an agreement and a condition, and each agreement shall be construed as also being an instruction and a condition and each condition shall be construed as also being an instruction and an agreement.

[LOCKHEED'S EXHIBIT A]

SAMPSON MOTORS, INC.

Thread Grinding - Taps and Gauges - Machining

Engineering - Development Work - Designing

1950 West Sixty-Second Street - Telephone PL. 2-2101

Los Angeles, California

February 5, 1945

Lockheed Aircraft Corp.

Burbank, California

Attn: Frank L. Frain, Dept. Manager

Financial Operations Division

Gentlemen:

We ask that you do not release our money held by you under Directive from Under Secretary of War. We have done everything possible to produce good work at a fair price. If money due us cannot be paid to us, we will be unable to continue in business.

Our accounts must be collected in order to pay our labor and meet our obligations, and if our account is not paid we shall advise our Attorney to bring suit or take such action as may be necessary to protect our interests.

It is regrettable that it will be impossible for us to do any further work unless our bills are paid in accordance with our original agreement.

Very truly yours,

SAMPSON MOTORS, INC.

Riley J. Brett

Riley J. Brett

President [35]

Case No. 5503-PH. U. S. A. vs. Lockheed. Lockheed Exhibit A. Date Feb. 6, 1947. No. A identification. Date Feb. 6, 1947. No. A in evidence. Clerk, U. S. District Court, Sou. Dist. of Calif. J. M. Horn, Deputy Clerk. [36]

[Title of District Court and Cause]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

This cause came on for hearing before the Court, without a jury, on February 6, 1947, and the Court having considered the pleadings, the stipulations made and entered into in open Court, and the evidence adduced by the parties respectively upon the hearing of this cause, and having heard the arguments of counsel and now being fully advised in the premises, now finds the facts and states the Court's conclusions of law, as follows:

FINDINGS OF FACT

1. That at all times herein mentioned, defendant Sampson Motors Inc., was and is a corporation, duly organized and doing business under and by virtue of the laws of the State of California and having its principal office and place of business in the County of Los Angeles, California; Lockheed Aircraft Corporation was and is a corporation duly organized and doing business under and by virtue of the laws of the State of California and having its principal office and place of business in the City of Los Angeles, California.

2. After due notice to the defendant, Sampson Motors Inc., proceedings for the renegotiation of said defendant's contracts and sub-contractors were [37] had and conducted by representatives of the Secretary of War. Thereafter, and on the 31st day of July, 1944, the Under-Secretary of War, acting under and by virtue of the Renegotiation Act and pursuant to authority delegated to him, duly determined in compliance with law, that of the profits realized by defendant during the fiscal year ended

November 30, 1942, under its contracts and subcontracts subject to renegotiation, Sixty Thousand Dollars (\$60,000) were excessive profits. Demand was made upon the defendant for payment to the United States of such excessive profits, less the appropriate tax credit, if any.

3. The tax credit to which defendant, Sampson Motors Inc., is entitled under Section 3806 of the Internal Revenue Code, is in the amount of Forty Two Thousand Eight Hundred Twenty Three and 67/100 Dollars (\$42,823.67).

4. Defendant Sampson Motors Inc. has not petitioned the tax court of the United States for a redetermination of the amount of excessive profits received by it, as provided by Section 403 (e) of the Renegotiation Act and the period for filing such petition has expired.

5. Thereafter, the Under-Secretary of War acting under and by virtue of the provisions of the Renegotiation Act and pursuant to authority delegated to him, issued withholding orders directed to the defendant, Lockheed Aircraft Corporation, requiring that it withhold for the account of the United States, any and all amounts not in excess of the amounts specified in said withholding orders that were otherwise due from said defendant, Lockheed Aircraft Corporation, to the defendant Sampson Motors, Inc.; pursuant to the requirement of said withholding orders, defendant Lockheed Aircraft Corp. has withheld from Sampson Motors Inc. for the account of the United States, the sum of Seventeen Thousand five hundred forty three and 08/100 Dollars (\$17,543.08), which amount said Lockheed Aircraft Corp. still retains.

6. That the amount of the balance due the United States from Sampson Motors Inc., including interest at

the rate of six percent per annum from July 31, 1944 to November 2, 1945, after allowing said defendant credit for the amounts withheld as aforesaid by Lockheed Aircraft Corp. is the sum of Thirty and 20/100 Dollars (\$30.20); and that the amount due, owing and unpaid to the [38] United States from the defendant, Sampson Motors, Inc., including interest at the rate of six percent per annum from November 2, 1945, to date, is the sum of Thirty Two and 61/100 Dollars (\$32.61).

7. That the amount now due, owing and unpaid to the United States from the defendant, Lockheed Aircraft Corporation, is the sum of Seventeen Thousand Five Hundred Forty Three and 08/100 Dollars (\$17,543.08).

CONCLUSIONS OF LAW

1. That the Court has jurisdiction of the parties to and of the subject matter of this action.

2. That plaintiff is entitled to recover from the defendant, Sampson Motors Inc., the sum of Thirty Two and 61/100 Dollars (\$32.61).

3. That plaintiff is entitled to recover from the defendant, Lockheed Aircraft Corporation, a corporation, the sum of Seventeen Thousand Five Hundred Forty Three and 08/100 Dollars (\$17,543.08).

It Is Ordered, that judgment be entered in conformity herewith.

Dated: 3/14/47.

PEIRSON M. HALL,

Judge—United States District Court. [39]

[Affidavit of Service by Mail.]

[Endorsed]: Lodged Feb. 24, 1947. Filed March 14, 1947. [40]

In the District Court of the United States
in and for the Southern District of California

Central Division

No. 5503-PH Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAMPSON MOTORS, INC., a Corporation, and LOCK-
HEED AIRCRAFT CORPORATION, a Corpora-
tion,

Defendants.

JUDGMENT

This cause came on regularly for trial before the Court, without a jury, on February 6, 1947, and in conformity with the Court's Findings of Fact and Conclusions of Law, it is

Ordered and Adjudged, that plaintiff, United States of America, do have and recover from the defendant, Sampson Motors Inc., a Corporation, the sum of Thirty Two and 61/100 Dollars (\$32.61); and it is further

Ordered that plaintiff, United States of America do have and recover from the defendant, Lockheed Aircraft Corporation, a Corporation, the sum of Seventeen Thousand Five Hundred Forty Three and 08/100 Dollars (\$17,543.08).

Dated: 3/14/47

PEIRSON M. HALL

Judge, United States District Court

Judgment entered Mar. 14, 1947. Docketed Mar. 14, 1947. C. O. Book 42, page 145. Edmund L. Smith, Clerk. By J. M. Horn, Deputy. [41]

[Affidavit of Service by Mail.]

[Endorsed]: Lodged Feb. 24, 1947. Filed Mar. 14, 1947. [42]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the District Court of the United States, in and for
the Southern District of California, Central Division:

You Are Hereby Notified that defendant Sampson Motors, Inc. a corporation, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from that certain judgment of the above entitled Court in the above entitled action, and from each and every part thereof, entered in the above entitled cause in Civil Order Book number 42 at page 145, on or about the 14th day of March, 1947.

Dated: April 25th, 1947.

ROBT. E. ROSSKOPF,
Attorney for Appellant

[Endorsed]: Filed & mld copies to ptf U. S. A. & mld copy to party deft Lockheed A/C Apr. 25, 1947. [43]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 46 inclusive contain full, true and correct copies of Complaint for Money Judgments; Answer of Defendant Lockheed Aircraft Corporation; Answer of Sampson Motors, Inc.; Statement of Issues and Offer of Proof; Sampson Exhibits A, B and C; Lockheed Exhibit A; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; and Designation of Record on Appeal which, together with copy of Reporter's Transcript of Proceedings on February 6, 1947, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$12.25 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 2 day of June, A. D. 1947.

EDMUND L. SMITH

(Seal)

Clerk

By Theodore Hocke

Chief Deputy Clerk

In the District Court of the United States
For the Southern District of California
Central Division

Honorable Peirson M. Hall, Judge Presiding

No. 5503-PH Civil

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LOCKHEED AIRCRAFT CORP.,

a corporation, et al.,

Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Thursday, February 6, 1947.

Appearances:

For Plaintiff: James M. Carter, U. S. Attorney; by
Robert E. Wright, Esq., Assistant U. S. Attorney.

For Defendant Lockheed: Mark E. True, Esq.

For Defendant Sampson Motors, Inc.: Robert E.
Roskopf, Esq.

The Court: U.S.A. versus Lockheed Aircraft Corpora-
tion. Who is representing Lockheed?

The Clerk: Mr. True, but he is not here yet. He said
he does not have very much interest.

The Court: What is the name?

The Clerk: Mark E. True. He is over in the Superior
Court for a few minutes. He will be here shortly.

The Court: All right. Mr. Wright, did you reach a stipulation here?

Mr. Wright: Yes, Your Honor. It is stipulated that the document attached to the complaint marked Exhibit A may be received in evidence and considered as the original order of determination of excessive profits made by Robert P. Patterson, the Under-Secretary of War on July 31, 1944.

It is further stipulated that demand was made upon the defendant Sampson Motors, Inc., a corporation, by the United States for payment to the United States of the amount of said excessive profits fixed by said order, less the proper tax credit, if any.

It is further stipulated—

The Court: Now, wait a moment. Demand was made upon Sampson Motors, Inc. for how much? Have you arrived at those figures?

Mr. Wright: The amount of excessive profits found in the order which is \$60,000, Your Honor.

The Court: Now, what is the demand for money? Have you stipulated on the amount of money involved in this case?

Mr. Wright: I will get to that in a moment, Your Honor, [2] if I may proceed.

The Court: All right.

Mr. Wright: It is further stipulated that the amount of the tax credit to which the defendant Sampson Motors, Inc. is entitled under Section 3806 of the Internal Revenue Code is in the amount of \$42,823.67, which credit is computed upon the assumption that the profits determined to be excessive were returned as income by said defendant

for tax purposes and that the proper taxes have been or will be paid on such profits.

It is further stipulated that defendant Sampson Motors, Inc., a corporation, has not petitioned The Tax Court of the United States for a redetermination of the amount of excessive profits received by it as provided by Section 403(e) of the Renegotiation Act, and that the period for filing of such petition has expired.

It is further stipulated that on October 6, 1944 the Under-Secretary of War by a written order sent by mail to the defendant Lockheed Aircraft Corporation directed said defendant Lockheed Aircraft Corporation to withhold for the account of the United States any and all amounts not in excess of \$9000 which were otherwise due or should become due from said defendant Lockheed Aircraft Corporation to defendant Sampson Motors, Inc.

Thereafter, on January 8, 1945 the Under-Secretary of War by a written order sent by mail to the defendant Lockheed Aircraft Corporation modified his aforesaid order dated October 6, 1944 by directing said defendant Lockheed [3] Aircraft Corporation to withhold for the account of the United States any and all amounts not in excess of \$19,000, instead of \$9,000, as originally specified, which were otherwise due or should become due from said defendant Lockheed Aircraft Corporation to defendant Sampson Motors, Inc.

The Court: That is \$19,000 instead of \$17,543.08?

Mr. Wright: No, Your Honor. It is \$19,000 instead of \$9,000 required to be withheld by the order of October 6, 1944.

The Court: Now, wait a minute. In the answer of Lockheed Aircraft Corporation they say on January 8,

1945 all amounts not in excess of \$19,000. Thereafter, it was further modified, is that right?

Mr. Wright: That is right, Your Honor.

The Court: Then in May it was again modified to \$17,543.08?

Mr. Wright: Yes. It is stipulated that thereafter on May 9, 1945 the Under-Secretary of War modified his aforesaid order dated January 8, 1945 by directing said defendant Lockheed Aircraft Corporation to withhold for the account of the United States any and all amounts not in excess of \$17,543.08 which were otherwise due or should become due from the Lockheed Aircraft Corporation to the defendant Sampson Motors, Inc.

It is stipulated the net amount of said excessive profits, less the tax credit aforesaid, is the sum of \$17,176.33.

The Court: I suppose it is also stipulated that [4] Exhibit A attached to Lockheed's answer "Schedule of Amounts Withheld" is correct as to the posting date, invoice date, invoice number, Lockheed liability number, and the amount?

Mr. Roskopf: The defendant Sampson will so stipulate.

The Court: I don't know that that is material, but I suppose it might become so.

Mr. Wright: We have reached an agreement all around with reference to that, if the Court please. That gets us to the ultimate fact with reference to the amounts which I will state and which Mr. True and Mr. Roskopf and I agreed to in our conference after we left the courtroom here the day before yesterday.

The Court: Do you stipulate that Exhibit A of Lockheed's answer is a true statement of the withholdings by Lockheed Aircraft Corporation?

Mr. Wright: Let me take a look at that for a moment. I think undoubtedly that is correct, Your Honor, but I want to look at it again to make sure.

Yes, it is so stipulated.

The Court: Very well.

Mr. Wright: Finally it is stipulated—

The Court: I see in the minutes vacation of the default.

Mr. Wright: That is correct.

The Court: All right.

Mr. Wright: Finally it is stipulated that after allowing to the defendant Sampson Motors, Inc. the amount or the [5] aggregate of the amounts withheld pursuant to the last order of the Under-Secretary of War, and charging Sampson Motors, Inc. interest at the rate of six per cent on the balances remaining from time to time due plaintiff, the amount of the balance in excess of that withhold pursuant to the order by Lockheed Aircraft Corporation is \$30.20. That gives allowance of interest at the rate of six per cent to November 2, 1945.

The Court: That is allowance of interest to whom? Who gets that interest?

Mr. Wright: The United States.

The Court: Very well.

Mr. Wright: To state it more directly, Your Honor, if the Court should decide here that the United States is entitled to judgment the amount of the judgment against Lockheed Aircraft Corporation will be \$17,543.08. The

amount of the judgment against Sampson Motors, Inc. would be \$30.20 with interest at the rate of six per cent per annum from November 2, 1945.

Mr. Rosskopf: There is a couple of dollars difference in what Lockheed Aircraft Corporation is withholding. They are withholding \$17,556 of it.

Mr. Wright: Yes. That is a matter of explanation and without incorporating it into the stipulation because it is immaterial.

The final order of the Under Secretary required Lockheed Aircraft Corporation to withhold \$17,543.08. In withholding that amount, when they got within a very close [6] range of it, there was another invoice on which they withheld payment. That invoice was for an amount of approximately \$15 in excess of the amount necessary to make up \$17,543.08. So that as a matter of fact Lockheed is holding really—

The Court: \$13.46 more than the withhold?

Mr. Wright: That is right. But of course, that hadn't any effect on this lawsuit as I see it. Is it so stipulated, Mr. Rosskopf?

Mr. Rosskopf: With one or two qualifications. Essentially I think it is stipulated. I am willing to state that the stipulation with reference to the making of the order by the Under-Secretary of War—the defendant will stipulate that that order was made and that the defendant received notice of that order in due course shortly after the order was made. We do not stipulate that the order was a proper order or stipulate in any way as to the effect of the validity of the order. We stipulate that the physical making and notice with reference to it occurred. Also with reference to the amount of the tax credit, we

stipulate that if the amount of excess profits claimed by the Secretary of War were greater than the tax credit as allowed would be greater; but in stipulating the proper amount of the tax credit we stipulate with that qualification without stipulating as to the validity of the order.

The Court: In the statement concerning the stipulation by Mr. Wright, item No. 6, he said it was stipulated [7] that the net amount of excess profit was \$17,176.33. Now, if you stipulate there was that amount of excess profit after allowing tax preferences and after allowing credit,—the point I am trying to get at is this: Do you stipulate that that is excessive profits, or is your stipulation made upon the proposition that if the original order is correct that would be the net amount?

Mr. Rosskopf: That is correct. We do not stipulate that that is excess profits or that any part of the amount of money herein involved is excess profits. We do stipulate that if the Court should determine that \$60,000 was excess profits the allowance of the tax credit would leave a net balance of \$17,176.33. In other words, we stipulate to the arithmetic, if I may put it that way, but we do not stipulate there is any amount due or that there was any excess profits.

Mr. Wright: The plaintiff rests.

Mr. Rosskopf: I have prepared here a document. I am sorry I did not have a chance to get it to Mr. Wright sooner. It is a statement of the issues and what amounts to virtually an offer of proof. I don't know whether Your Honor would prefer to read it or have me state it, but I think it pretty well covers the position of the defendant here. (The document was handed to the Court).

The Court: I have read down to line 19 of page 5. Have you got that far?

Mr. Wright: Not quite, Your Honor.

The Court: When you get there, let me know. [8]

Mr. Wright: I will let Your Honor know. Yes, I have reached that point.

The Court: That appears to be a statement of facts up to there.

Mr. Roskopf: Yes, Your Honor, it was so intended.

The Court: Is there any dispute about that or can it be stipulated or will the defendant be required to submit proof?

Mr. Wright: It is immaterial, Your Honor, in view of the stipulation that is made and in view of the facts that appear in the case—these facts are immaterial. They are immaterial for these reasons: The Renegotiation Act provides that an agreement shall be reached if possible as to the amount of excessive profits and if it is not possible to reach an agreement as is recited here in this statement of facts, a unilateral determination may be made by the Secretary. Then the Act provides that that is only a part or rather the first step in the administrative process. The fixing of the amount initially, either by an agreement or by a unilateral determination by the Secretary is the first step. The Act provides then that if the contractor or sub-contractor, as the case may be, is dissatisfied with the amount so found he may within ninety days file a petition in The Tax Court of the United States and that court under the law, under the decision of the Ninth Circuit and of the United States Supreme Court, has the power and duty and authority to cite all questions of law and of fact. The hearing before The Tax Court is a [9] *de novo* hearing and not a proceeding in review.

The Court: That is a recent decision?

Mr. Wright: Yes, Your Honor, a couple of days ago.

The Court: What is the name of that case?

Mr. Wright: That is Pownall versus United States, No. 11340.

The Court: You may continue with your statement.

Mr. Wright: The stipulation shows the fact to be that the defendant Sampson Motors, Inc. in this case did not file a petition before The Tax Court within the time.

The Court: It is admitted in their answer.

Mr. Wright: Yes, and it is admitted in their answer. Consequently, this Court has no jurisdiction to pass on the questions that are presented here by these facts, that is, these facts stated in the document that has been handed to Your Honor, the memorandum that counsel has prepared.

The Court: In defendant's answer, paragraph 5 of Count 1, it is admitted they have not petitioned for renegotiations by reason of the lack of jurisdiction over this defendant as hereinbefore alleged. I see. It denies that. I suppose that is developed in your memorandum here?

Mr. Roskopf: Yes, Your Honor.

The Court: All right. You have raised a special defense here that you were denied due process.

Mr. Roskopf: That is correct, Your Honor. We claim that we were denied due process. [10]

The Court: I think all of these facts would be material under that defense.

Mr. Wright: Your Honor, if you will notice page 3. the Pownall case.

The Court: Yes, but they have raised a special defense here of unconstitutionality and validity.

Mr. Wright: You are speaking about the Sampson case.

The Court: In the Sampson case. It would seem to me that that defense can be raised at any point where the plaintiff's claims come into impact with the defendant. If they come into impact with the defendant in The Tax Court he can raise it there. Both sides are agreed that this Court has jurisdiction of this suit. This is the first opportunity he has had to raise that and it is the first point where plaintiff's claims have come into impact with the defendant.

Mr. Wright: No, this is not the first.

The Court: In court?

Mr. Wright: No, in The Tax Court.

The Court: No, this is the first. If you have jurisdiction to file this suit then he can raise the constitutional question here.

Mr. Wright: The power of Congress to pass the statute, yes.

The Court: I think he might also be able to raise, as I read his statement of facts,—I haven't read his argument in support of it, but reading between the lines of his statement of fact, I take it in addition to the [11] unconstitutionality of the Act which he expects or intends to urge, he also expects or intends to assert that the Act was unconstitutionally administered. An act itself can be constitutional, but it can be unconstitutionally administered.

Mr. Roskopf: That is my position, Your Honor. We raised two points, the constitutionality of the Act and

the due process of the unconstitutionality of the administration in this particular case.

The Court: A man might have the power under the law to do so, but he might do it without granting due process.

Mr. Wright: May I call Your Honor's attention to the case of Macauley versus Waterman Steamship Company, in which—

The Court: Where is it reported?

Mr. Wright: It is 327 US at page 540.

The Court: That is now in the advance sheets, the printed advance sheets?

Mr. Wright: Yes.

Mr. Roskopf: I think it is still in the advance sheets.

The Court: Suppose you let me read the rest of defendant's statement here and then I will have a better idea what his position is.

Mr. Wright: Yes, Your Honor.

The Court: These two cases seem to be pretty well in point. Wherein do you distinguish?

Mr. Roskopf: I distinguish from the two cases in this respect. [12]

The Court: The Waterman case and the Pownall case.

Mr. Wright: Here is another one, Your Honor. U. S. versus Alexander Wool Combing Company.

The Court: Well, I won't get to that yet.

Mr. Roskopf: I distinguish between them in this way that in each one of those cases—I should say in the Waterman case the contractor there was seeking an injunction to restrain the Secretary of the Maritime Commission from renegotiating. In the case before the

Court Sampson is not in here asking for any relief. They are in here asking to protect the *status quo*. In other words, we are not in here trying to restrain renegotiation. We are not in here even trying to take the money as such, but we are trying to protect our claim that that is our money, and that is one point. The other point, and I think the most important point, is this: That the remedy of appeal to The Tax Court, that Tax Court was not even established at the time of the fiscal year here involved and under the Renegotiation Act of 1942 which covers this situation, there was no Tax Court of Appeal and no right of appeal and no provision whatsoever. The only provision in the 1942 Act was a provision for recovery in Courts of the United States. * * * [13]

* * * * *

The Court: I am inclined to think that the facts which he alleges here are material and admissible—if there is no question about it—and in view of the fact the plaintiff has rested, the defendant may put his proof on. [36]

* * * * *

The Court: (To the clerk) Get me 154 Fed. 2nd, will you? The point I am making is this. There are obviously some questions of law that cannot be decided offhand. As a matter of fact, you cannot find them unless you spend a lot of time in distinguishing between upper and lower case, Roman and Arabic numerals. There is no need for continuing the discussion of the matter and postponing the time for determination of those findings. If there is any dispute about it—in other words, if you can stipulate that down to line 19 is true, but you object to its materiality and to its admissibility, then at least we can get over the point of the facts here and you wouldn't have any proof to offer, would you?

Mr. Rosskopf: No, Your Honor.

Mr. Wright: Mr. Brett is in court, Your Honor. If the Court is going to hear this, there are some other qualifying facts that Mr. Brett will state in court as he [38] has in our conferences concerning his attitude with reference to the hearing and the attitude of the Major who came over and whose belligerency or at least stress and strain—if Your Honor is going to go into those facts, I think it might be well to develop them as they were and not as they are polished up and stated in this document that was handed to the Court this morning.

The Court: Whatever you wish to do about it.

Mr. Wright: I say they are immaterial and I cannot stipulate to the facts as stated here anyhow in view of what I know.

The Court: All right, put your witness on.

Mr. Rosskopf: If I understand Your Honor's position, we are to proceed with the evidence?

The Court: Yes, over plaintiff's objection and upon which objection I will reserve ruling.

Mr. Rosskopf: I will call Mr. Brett. [39]

RILEY J. BRETT,

called as a witness on behalf of the defendant Sampson Motors, Inc., having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Rosskopf:

Q. What is your name? A. Riley J. Brett.

Q. Mr. Brett, what is your connection with Sampson Motors, Inc.?

A. I am president of the corporation.

(Testimony of Riley J. Brett)

Q. And you have been for a number of years?

A. Three years, I believe.

Q. Were you during the entire fiscal year of November 30, 1942?

A. I was secretary of the corporation then, if I remember correctly.

Q. Were you during all of 1942 the general manager and in charge of the operations of the plant?

A. I was, yes.

Q. Did you receive a call from somebody purporting to represent the Secretary of War with reference to a renegotiation of the Sampson Motors' business for the year ending 1942?

A. The first notice I had was a postcard.

Q. Do you have that postcard?

A. I couldn't say. I may. [40]

Q. Pardon?

A. I don't know. I may have it. I don't know for sure.

Q. I will state it is in the file Mr. Bromley turned over to me.

A. It may be at the shop.

Q. You think you may have it?

A. It is possible, yes, sir.

Q. Do you recall when that was received?

A. It was in 1942, if I recall correctly.

Q. In 1942?

A. It may have been 1943, I don't know.

Q. We are discussing the fiscal year which ended November 30, 1942?

A. Yes.

(Testimony of Riley J. Brett)

Q. Keeping that in mind, Mr. Brett, what was the next notice or transaction you had?

A. I called over to the Wilshire Building and told them I had this notice and told them I wanted to get it over with. They sent over Mr. Dave Moore, or it might have been Smith. It was either Smith or Moore. He started on it and I got along very good with him. Then he was taken off. Then Major Schumacher—he was a captain at first and later on he was a major—he took over and it was locking horns from then on; there was nothing I could do that pleased him.

Q. Let's get back just a moment to Mr. Moore, the first man who came out. Will you state to the Court what [41] he did?

A. Well, he didn't think that we would even be re-negotiated.

Mr. Wright: I object to what he thought, Your Honor. The question is what he did.

The Witness: Well, he looked over in a preliminary way our business and I explained to him the good along with the bad. He thought we had nothing to fear as far as the costs were concerned because I was spending a lot of money at the time and I wanted to be very careful not to overspend and not have my tax money.

By Mr. Rosskopf:

Q. How long was Mr. Moore there? By the way, did this take place at your place of business?

A. It did, yes, sir.

Q. Where is that place of business?

A. 1950 West Sixty-second.

Q. In Los Angeles?

A. Yes, sir.

(Testimony of Riley J. Brett)

Q. All right. How long did Mr. Moore remain there or how many times did he come?

A. I think he was sent there once and I would say an hour or possibly a little longer.

Q. He did not return? A. No, he did not.

Q. The next call you had was from Captain Schumacher? A. Yes.

The Court: How do you pronounce it? [42]

The Witness: Schumacher.

By Mr. Roskopf:

Q. Will you just relate to the Court what happened when Captain Schumacher came to your place?

A. Well, he first asked for a financial statement. I told him I wanted to talk with the auditor first.

He said, "Well, we will examine your books if you don't get it for me."

It was finally obtained and I turned it over to him. When he received it he signed for it at the time.

Q. About when was that?

A. I don't know exactly what date it was. I couldn't get close to it.

Q. Was that before the so-called hearing that was set up on Beverly Boulevard A. Yes, it was.

Q. Did you thereafter receive a letter that a hearing would be held at the Army Air Forces office on the 29th of May, 1944? A. I believe we did.

Q. That was at 3636 Beverly Boulevard?

A. Yes.

Q. In response to that notice did you appear at that hearing? A. Yes, with counsel.

Q. Who was with you?

A. Mrs. Brett and Mr. Bromley.

(Testimony of Riley J. Brett)

Q. Will you just state to the Court what took place [43] at that time as near as you can remember what was said and what was done?

A. Well, there was very little if anything. We weren't allowed to say any more than I could in my own place.
By the Court:

Q. All right, what was said?

A. Well, he asked me if I wanted to—

Q. Who asked you?

A. Captain—well, he was a major at that time, Major Schumacher.

Q. Who else was there?

A. He didn't have any one in his office excepting our attorney and my wife.

Q. What was said?

A. He asked me if I wanted to settle. I told him no. There was other discussion, but I cannot accurately state what that was, Your Honor.

Q. What was it, the substance of it?

A. Well, I am ashamed to admit it, but when he wanted to shake hands with me I wouldn't on account of the treatment I received at my place. It was just a question. He wanted to know if I wanted to make a settlement and I said no, not unless he wanted me to state the facts which he had never heard. That is the substance of all of it, Your Honor.

Q. What else was said? Did he say "Get out" or did you say "I am going home"? Did your lawyer say something? [44]

A. Well, there was some comedy that came into it, that I can state pretty accurate; he said they made a mis-

(Testimony of Riley J. Brett)

mold or something when they molded me. That is all I can recall.

Q. Was there any discussion had at that time concerning a definite figure?

A. There was not, not at that meeting.

Q. Did he ask you any questions about your business, what you were making?

A. He did not, Your Honor.

Q. Did he ask you any questions about the efficiency of your business?

A. He did not, Your Honor.

Q. Did he ask you any questions at all?

A. No, only did I want to settle.

Q. That is the only question he asked you?

A. That is all I recall, Your Honor.

Q. Did he mention any figure at all?

A. He did not.

Q. Did you ever see him again?

A. Yes, Your Honor.

Q. When did you next see him?

A. I can't recall the date, but it wasn't a matter of two or three weeks, I would say. He was there some eight or ten times, I might say, in all.

Q. There?

A. Yes.

Q. Where? [45]

A. At our shop.

Q. Did you give him access to your books and records?

A. Not until he subpoenaed the books.

Q. He subpoenaed them?

A. Yes, sir.

Q. When?

A. That was in 1943.

Q. Where?

A. At our plant at 1950 West Sixty-second Street.

Q. In 1943?

A. I think it was 1943, yes, sir.

(Testimony of Riley J. Brett)

Q. Do you mean he subpoenaed them? Did he have you bring them some place? I don't understand.

A. We had a choice of taking them over there or him sending auditors to our plant, and they sent auditors there and audited the books in our plant.

Q. At that time you gave them access to all of your books and records?

A. That is right, yes, sir, Your Honor.

By Mr. Roskopf:

Q. You say they sent auditors to your plant then?

A. They did, yes.

Q. You say that was in 1943? A. 1943.

Q. When was the first notice you had or the first intimation that the Government expected \$60,000 in excess profits from you?

A. Mr. Schaumacher. Major Schumacher, I should say, [46] came there. He said he had it all ready for settlement and we owed the Government \$60,000 and that he was going to recapture it. Mrs. Brett asked him if that was before taxes and he said yes.

Q. What did you answer to that?

A. I told him I wouldn't pay it.

Q. Was anything said concerning the method of arriving at the \$60,000 figure?

A. We wrote him a letter asking for the method of determination, but we never had any answer.

Q. Did you ever receive any kind of a computation?

A. I never did.

Q. Or a document showing how that was determined?

A. We never did.

Q. Do you know how it was arrived at?

A. I do not.

(Testimony of Riley J. Brett)

Q. You thereafter received a wire from Washington, did you not? A. What?

Q. You have read this statement I prepared for the Court, have you not? A. I have, yes.

Q. I call your attention to a statement in there that on or about June 19, 1944 you received a wire from the chief of the renegotiation branch. You received that wire as set forth in that statement, did you? A. Yes.

Q. You did receive such a wire? [47] A. I did.

Q. On or about that date? A. Yes.

Q. And you replied in accordance with the answer which is set forth herein? A. Yes.

Q. How big is your shop, Mr. Brett?

The Court: Do you want to file that, counsel? It is not in the record. That wire is not in the record.

Mr. Roskopf: I would like to ask that the statement which I have handed to Your Honor be filed and the wires which I have referred to are appended in that statement.

The Court: This will be filed.

Q. Did you receive a letter on or about May 24, 1944, advising you by registered mail that you would have the privilege of presenting to them any factors pertaining to the renegotiation of your fiscal year ending 30 November, 1942, stating that inasmuch as settlement proposed by you has not been accepted by you— A. Yes.

Q. —the district board has reserved the afternoon of Monday, 29 May, 1944 to meet you at the district headquarters at 3636 Beverly Boulevard, Los Angeles, California; you received that?

A. I did, Your Honor.

(Testimony of Riley J. Brett)

Q. That is a letter in response to the one meeting held at the office of Major Schumacher which you attended? A. Yes, sir. [48]

Q. Who was the board? Was he the only person there? A. He was the only person in the office.

Q. Did he tell you that he was the board or something? A. No, he did not.

Q. Did he say who he was?

A. Well, I knew who he was, Your Honor.

Q. No. I mean did he give you some statement or identification as to his power or authority to act in the matter? A. He did not, no sir.

Q. Did he ever?

A. Oh, yes, he told me on his first visit to our place that he could settle it right then and there if I wanted to the first time he was over.

Q. Did he ever present you any document from the War Department or anybody else which indicated an authorization on his part to negotiate with you?

A. Well, he had credentials to show that he was a renegotiating officer.

Q. Then on or about June 1, 1944, you received a wire set forth beginning on page 2, line 31 down to line 15 of page 3 of this statement; is that right?

A. Yes, sir.

The Court: May it be stipulated that the reporter can copy that into the record, Mr. Wright? Or do you want the whole wire? Have you got the wire?

Mr. Roskopf: I don't have the wire, but I have a [49] letter.

Mr. Wright: I haven't any objection, Your Honor.

(Testimony of Riley J. Brett)

(The telegram referred to by the Court is incorporated into this record as follows:)

“RENEGOTIATION IMPASSE YOUR COMPANY WITH ARMY AIR FORCES REFERRED TO THIS BOARD. UNDERSTAND THERE IS NO MATERIAL DISAGREEMENT AS TO REPORTED FACTS AND FIGURES AND INABILITY REACH AGREEMENT DUE SOLELY TO AMOUNT OF PROPOSED REFUND. CAREFUL REVIEW AND CONSIDERATION REPORTS COVERING CASE INDICATE SETTLEMENT FAIR AND EQUITABLE. SHOULD YOU CONSIDER FURTHER HEARING DESIRABLE WITH BOARD REPRESENTATIVES IN WASHINGTON MEETING CAN BE ARRANGED FOR TEN A. M., 29 JUNE 1944, ROOM 3D 573, THE PENTAGON. IN EVENT THIS DATE INCONVENIENT PLEASE ADVISE BY TELEGRAPH OR TELEPHONE YOUR CHOICE NOT LATER THAN TEN DAYS THEREAFTER. IF MEETING NOT DEEMED NECESSARY NO ALTERNATIVE BUT TO SUBMIT CASE TO UNDER SECRETARY OF WAR FOR DETERMINATION. PLEASE ADVISE BY 26 JUNE SPRAR.”

The Court: You sent on January 20, 1944 the wire which is set forth on page 3 of this statement, lines 25 to 32; is that right?

The Witness: Yes, Your Honor, that is correct.

Mr. Wright: I haven't any objection to the incorporation of that in the record as it is set forth in this memorandum.

(Testimony of Riley J. Brett)

The Court: Very well. [50]

(The wire of June 20, 1944 is incorporated into the record as follows:)

"There is no impasse. No determination or basis of claim for refund or settlement ever been presented. Local Board refused to allow us to present facts under Sec. 403 A(4)(A) so it is impossible for you to have all facts.

"Attendance in Washington is unreasonable as it would stop our entire production of essential aircraft parts that I have agreed to manufacture."

The Court: Then thereafter you received a letter bearing date 29 June, 1944, and which is set forth on page 4, lines 3 to 9 of this statement:

"In accordance with our telegram to you of 19 June 1944, inasmuch as it has not been possible to work out an agreement as to the requested refund of \$60,000 excessive profits for the year ended 30 November 1942, we are recommending that this case be submitted to the Under Secretary of War for his consideration."

The Witness: Yes, sir, we received that letter.

The Court: You thereafter received another letter bearing date July 31, 1944, which is set forth on lines 14 to 28 of your statement; is that correct?

The Witness: Yes, sir.

Mr. Wright: I will agree the reporter may copy in the [51] lines just indicated by Your Honor as being the substance of the two communications in question.

Mr. Rosskopf: Thank you, Mr. Wright.

(The letter of July 31, 1944, referred to by the Court is copied into this record as follows:)

(Testimony of Riley J. Brett)

"I have reviewed the data furnished by your company and the proceedings in connection with your 1942 renegotiation with the War Department Price Adjustment Board and have reached the conclusion that the proposal heretofore made to your company by the War Department Price Adjustment Board should be affirmed. I have therefore made a unilateral determination that \$60,000 of the prices and profits realized by Sampson Motors, Inc., during its fiscal year ended 30 November 1942, under its contracts and subcontracts subject to renegotiation pursuant to the provisions of Section 403, are excessive. An executed original of such unilateral determination is inclosed herewith."

The Court: You referred to another letter. There is no dispute about tax credit of \$42,000 and the transmittal of the difference, is there?

Mr. Roskopf: No.

The Court: The rest of the matters here were stipulated to except that on or about that date I think I can probably [52] take judicial notice of the strict priority basis in the securing of private transportation from Los Angeles to Washington, D. C.

Q. Did you make any effort to get priority, Mr. Brett?

A. Yes, sir.

Q. At or about that time?

A. I did, Your Honor.

Q. Were you able to get it? A. No, I wasn't.

Q. You were unable to secure any method of transportation? A. Well, I could have driven.

Q. By automobile? A. Yes, Your Honor.

Q. Well, did you have gasoline coupons?

(Testimony of Riley J. Brett)

A. Yes, I did.

Q. You did? A. Yes.

Q. You had gas?

A. We had plenty of gas, yes, sir.

Q. Could you have otherwise left the business?

A. No; I figured it would be the wrong thing to leave the business.

Q. What was your position?

A. I was managing the whole plant.

Q. What did the plant do?

A. Well, we had to make aircraft parts. We had thirty-four machines and I set up most of them. We were [53] entirely with girls at that time.

Q. And you were managing it?

A. Oh, yes, Your Honor.

Q. Your time was actually required there every day, was it?

A. To get right in and work, Your Honor.

The Court: All right.

By Mr. Rosskopf:

Q. What do you mean when you say you set up most of it?

A. I set up all of the machines for anybody that needed them and nobody else could do it.

Q. In other words, you set up a particular machine to do a particular job and then the operator would operate it? A. She would operate it, yes, sir.

Mr. Rosskopf: Does Your Honor want to take the noon recess now?

The Court: Yes, we will recess until two o'clock.

(Noon recess at this point.) [54]

Los Angeles, California, Thursday, February 6, 1947,
2:00 P.M.

RILEY J. BRETT,

resumed the stand and being further examined by Mr. Roskopf testified as follows:

Q. Mr. Brett, I would like to have you go back to the first contact that you had with reference to renegotiation for the fiscal year ending November 30, 1942, and if you can just state to the Court the various conversations and calls which were made in connection with them. In other words, as nearly as you can, tell us the order that they occurred and state who came to see you and what took place in connection with the renegotiation.

The Court: Before you answer that question, in connection with the Government's objection to the introduction of this evidence, during the noon hour I read the Spaulding case and the other case. I think under the Spaulding case this evidence is admissible. In 154 Fed. 2nd, page 422 the Court says, among other things:

"We are unable to see how the making of the contract and its performance estops the subcontractor appellants from contending that it is not controlled by a statutory provision which, if unconstitutional, does not exist." And so forth.

In other words, I think the defendant here has the right to raise the question of the unconstitutionality of the Act and of the conduct of the people in the renegotiation process.

Mr. Roskopf: Now, will you read the question, Mr. Reporter.

(Pending question read.)

(Testimony of Riley J. Brett)

The Witness: Well, this notice was brought over. It wasn't mailed. It was brought over. The Inglewood District advised me to call the Wilshire District and have some representative come over, which I did, and they sent their man named Dave Smith or Moore—I don't know that name. I related what we had done in the short time he was there.

He said, "Well, you are going to get along all right. I see no reason for you to have anything to fear."

He was taken off or quit. I don't know where he is now. Then this Captain Schumacher came in.

The Court: Just a moment. When Dave came over did he examine the books and records?

The Witness: Only tentatively, Your Honor.

The Court: All right.

The Witness: He let me relate what was my good doings, I thought.

The Court: Very well.

The Witness: Then Captain Schumacher came over and we went into the office. There was nothing I could relate. I couldn't say a thing. All he wanted were facts and figures and he wanted them right now. He always came with a companion or helper. So Mrs. Brett and I called in some one to hear the conversation. There wasn't much said. He demanded a financial statement which I did not release. [56] Then he came back again and I would not release it. He said he would have to get a subpoena to release the books. I said that would be one way of doing it.

Then General Stetts called me and asked if I would not release the financial statement to him, and I said yes, I would, and I did and I had him sign a receipt for it.

(Testimony of Riley J. Brett)

That seemingly antagonized Major Schumacher very much because I couldn't talk to him from then on at all. He would come over, but there was nothing I could say until he had these facts and figures and he would get them and that was it. We just didn't get anywhere talking to him. I tried to explain how I reduced prices on different occasions, but that didn't mean a thing. I offered to show purchase orders where we voluntarily did it, which would save as much as fifty per cent on large orders, not small ones. He said, "That doesn't mean a thing. I want financial statements."

When he came back it was the same thing. There was no cooperation or anything. He told me if I wanted to cut down my profits I should spend more money advertising, which I didn't have any occasion to do because I had more work than I could do and no demand for advertising that I could see.

The Court: Was your work entirely in war effort? Were you producing entirely for war work?

The Witness: Yes, sir, ninety-five per cent. He also told me I should pay my wife more salary. Well, we had no control over salary. They were set up by the National [57] Labor Relations Board, and I told him that. There was nothing I could do that would impress him that I had done a good job. Seemingly in his mind I was a victim to be under his command.

Then to bring it to rather a climax, he had this gentleman with him. I asked him in a nice way, as nice as I knew how, how the Government could fine me for saving them \$75,000 in one year. "I can show you in one contract. Major, where in one contract alone I saved you \$75,000,

(Testimony of Riley J. Brett)

the same Army Air Forces that you represent. I would like to have you answer that question."

His accomplice tried to answer it. In a rude way he told him to shut up, that he was his superior and would take care of it himself. That is about the substance of it.

By Mr. Roskopf:

Q. He was in your place a number of times before this meeting in the Air Force Building on Beverly Boulevard? A. Yes.

Q. Do you recall on any of those occasions when he was in there whether he stated how much money he thought he considered excess profits?

A. No, not until we talked to him that one time when he said he was going to recapture \$60,000. Mrs. Brett asked him if it was before or after taxes. I didn't say anything then.

Q. What did he say to that?

A. I believe he said it was tax deduction. [58]

Q. Was he also working on your 1943 fiscal year about the same time? A. Yes, he was.

Q. In connection with the renegotiation of the 1942. Was there any discussion with relation to your business for 1943?

A. There was, yes. He informed me and he even threatened me that if I didn't do over \$500,000 I was subject to sabotage, and he called the War Production Board and Mr. Elmer Nege, and he also called my auditor, and they both called me and told me that they had this—you would call it a threat—from Major Schumacher and I had better do over \$500,000. Mr. Bromley, my attorney, said if I go into anything like that not to depend

(Testimony of Riley J. Brett)

on him for protection, that I had better get Jerry Giesler if I went into that subject.

Mr. Wright: Your Honor, I don't want to interrupt all the time with objections if we may have it understood that all of this testimony is going in subject to the objection which the Court has overruled. I would like to state it fully so there won't be any question about it. All of this evidence is immaterial and irrelevant because it relates to a subject concerning which this Court has no jurisdiction by reason of the failure of the defendant Sampson to file a petition in The Tax Court. I think that states it with sufficient fullness. If we may have that understanding I won't interrupt any more.

The Court: When the objection was made in the beginning [59] I assumed it was on that ground and I overruled it and stated then and will restate now if you feel it is necessary to protect the record that the objection may be deemed to have been made and overruled as to the entire line of interrogation.

By Mr. Roskopf:

Q. You stated, Mr. Brett, that you had offered Major Schumacher a letter to show that you had made a saving of \$75,000. I show you here a document and ask if that is the letter to which you referred? A. Yes, sir.

Q. Where did you receive this letter, this particular paper that is now in your hand?

A. At our place of business, 1950 West Sixty-second Street.

Q. How did you receive it?

A. It was mailed.

Q. It was mailed to you? A. Yes.

(Testimony of Riley J. Brett)

Mr. Rosskopf: We will offer that as Defendant's Exhibit.

The Court: Exhibit A.

By Mr. Rosskopf:

Q. During any of the times when you talked to Major Schumacher or anybody else from the Army Air Forces about this renegotiation was that letter handed to Major Schumacher or to anybody else representing the Air Forces?

A. Not to Major Schumacher, no, but I believe that [60] Major Kilgore saw that letter. I am not sure. He was the head of our branch out there in Inglewood which controlled our area.

Q. You stated that you offered that letter to Major Schumacher. What was his response to that offer?

A. He wasn't interested in anything that I could tell him or show him. I offered him purchase orders to show where I had saved up to fifty per cent by making forgings instead of bar stock, but that wasn't his duty; his duty was to renegotiate and he was not interested in anything I could show him.

Q. Did Major Schumacher go through your plant?

A. He did not. He was in the offices only.

Q. He never went into the shop?

A. No. I wouldn't let him.

Q. How many employees did you have in your shop on the average during the year 1942?

A. I had thirty-four men. Forty-two was the most I had. For an average it would be, I would say, somewhere between twenty-five and thirty.

Q. Did you spend all of your time in the shop?

A. I did.

(Testimony of Riley J. Brett)

Q. Did Mrs. Brett spend all of her time in the office?

A. She did.

Q. I believe you stated before that you set up all of the machines. You are a machinist by trade, are you not?

A. Yes, sir. [61]

Q. You have been in the machine shop business for a number of years, Mr. Brett?

A. Thirty years.

Q. Did Major Schumacher or anybody else representing the Air Force in connection with this renegotiation inquire into or go into, so far as you knew, the question of your use of raw materials?

A. Major Menasco. Several visits to our shop and his efforts or his mission seemingly was to get us to buy more machinery. Then the War Production Board came out and wanted us to buy more machinery. I told Major Menasco I did not see any reason for thread garners. I didn't see why I should pay more for machines. He said if I showed him there were idle ones around town he would do something about it. I referred him to Kinner. He went out to Kinner's plant and said there were several machines and wouldn't do general job shop work. I told him I thought he was mistaken and if he would pave the way for us I would be able to go out and see if it would. So I went out and set up the machine and ran numerous parts on it, the very parts we were making. It was identical with the machine we had in our shop. Then Mr. Nege came out and insisted on more thread garners. I said I couldn't buy them; I would be very glad to have the auditor come out and go over the financial status with him and if he could show me where it was even a good adventure I would be willing to buy them. That happened. Mr. Nege came out and Mr. Masters came out. It showed

(Testimony of Riley J. Brett)

we could not do it; we [62] did not have capital to do it. We did buy one more used one from San Diego after that.

Q. You stated at this hearing in the building of the Air Forces on Beverly Boulevard that Major Schumacher was the only one there representing the Army?

A. That is right.

Q. Was any evidence received there at all?

A. I don't know what that mission was for and I don't believe Mr. Bromley or Mrs. Brett did. We don't know yet why that arrangement was made because there was nothing said.

Q. Was any agreement prepared and submitted to you at that time? A. No.

Q. Or at any other time?

A. No other time that I know of.

Q. Have you ever seen up to this very day a computation or any schedule of figures showing how the \$60,000 was arrived at? A. I have not.

Q. You stated on a number of items you did make voluntary price reductions in war goods?

A. I did.

Q. Were you familiar with the prices that other machine shops were charging for the same items?

A. In the neighborhood, yes.

Q. Do you know how your prices compared with prices of other shops? [63]

A. Well, not all of them, but the ones I do know we were considerably lower, I would say as much as thirty to forty per cent. I had the opportunity of doing the estimating for one of my neighbors and he always brought them up higher than I estimated them a good deal.

(Testimony of Riley J. Brett)

Q. Was a large portion of your work under purchase order from Lockheed Aircraft? A. In 1942, yes.

Q. I show you here what purports to be Lockheed purchase order bearing date of March 20, 1943 and a change bearing date of May 20, 1944, and I will ask you if that was a purchase order to your company?

A. Yes.

Q. I call your attention to the change order so-called and the statement of the reason for the change "vendor's voluntary price reduction a part formerly made from casting changed to forging." A. Yes.

Mr. Rosskopf: I will offer that as Defendant's next in order.

The Court: Exhibit B.

Mr. Wright: This fiscal year ended November, 1942, Your Honor.

The Court: What is this?

Mr. Wright: 1943 and 1944, as I understand, counsel.

The Court: I don't think this would be material.

Mr. Rosskopf: That particular one is in 1943, Your Honor. [64]

The Court: The objection to this is sustained.

Mr. Wright: I am just calling the Court's attention to it.

The Court: Yes.

Mr. Wright: I am not adding to my other objection.

The Court: I understand.

By Mr. Rosskopf:

Q. Do you know whether there were price reductions granted, voluntary or otherwise, during 1942 on aircraft items? A. Yes.

(Testimony of Riley J. Brett)

Q. Or war goods? A. There was, I am sure.

Q. Do you recall any of them in particular?

A. I believe it was called a tab gear. We made many hundreds of them. I think we made around 5,000. I asked Lockheed for the privilege of changing my bar stock, which was heavy to handle because we had no cranes in our shop, to forgings. They said it would be all right, but they could not hold up because it would take I don't know how long to get an order through to change over the engineering and all, so I had the die made at Ajax Forging and paid for it myself. Then they in turn paid for it. That reduced the cost roughly forty-five per cent. We got around \$8 for the gear and Lockheed furnished the stock, replaced with forgings and were furnishing material for \$4.15. I believe those are the correct figures. We had a wire from Lockheed at Nashville wanting some of these gears that we [65] later discontinued, but we did let them have the use of the dies which are still ours. I believe the Slogan Machine made them for them.

Q. Was any of that information given to Major Schumacher?

A. Major Schumacher would not listen to anything like that. The other gentlemen would, but I couldn't possibly—

By the Court:

Q. Did you give it to the other gentlemen?

A. When Major Schumacher was there I showed him the things that I had in there at the time, Your Honor, and he informed me that he thought we had little to worry about in renegotiation as he saw it in his haste, as he was there on his first visit.

(Testimony of Riley J. Brett)

Q. All of your correspondence was made back and forth to Mr. Schumacher, was it?

A. All of our correspondence?

Q. Yes.

A. I don't think I ever gave him anything other than that financial statement.

Q. Well, when he sent the auditors out.

A. Well, they had a subpoena for that.

Q. The auditors saw all of your correspondence and records?

A. Yes. There was a gentleman named Sheehan who was very cooperative. He spent some time in the shop with me. He was very cooperative to help us in any way he could. [66] I believe his name was Dick Sheehan. He seemed to be in charge of that branch of auditing.

By Mr. Roskopf:

Q. I show you here what appears to be a financial statement of Sampson Motors for the fiscal year ending November 30, 1942, and ask you if that is the financial statement for your company for that year?

A. Yes, I would say it is.

Q. That is the statement which was made available to the Army Air Forces?

A. Yes, sir.

Mr. Roskopf: I will offer that as Defendant's next in order.

The Court: Exhibit C.

By Mr. Roskopf:

Q. Now, you were drawing a salary as an employee of the corporation, were you?

A. Yes.

(Testimony of Riley J. Brett)

Q. How much did you draw during the year, 1942?

A. I cannot exactly answer that. I don't know whether it was fifteen or sixteen thousand dollars, something like that.

Q. And Mrs. Brett, your wife, was also an officer of the corporation?

A. That is right.

Q. Do you know how much she drew as such officer for that year?

A. No, I do not. I am sorry, I don't know. [67]

Q. Perhaps she can help us on that. Do you know how much the gross sales of Sampson Motors were for the fiscal year which ended in 1941?

A. 1941? No, I don't. I know 1943, but I don't know 1941.

Q. Do you recall approximately or relatively how much? A. 1941?

Q. Yes.

A. I am not sure. I am only guessing. It was around \$100,000, I would say, something like that. I don't know how far off I am.

Q. In other words, there was a substantial increase in the volume of business in 1942?

A. Yes, I think it was doubled.

Q. I believe you stated you did purchase a number of items of new machinery in 1942?

A. Yes, we did.

Q. Those were all purchased, were they, with Air Force priority? A. Yes, they were.

Q. And with their knowledge and consent?

A. Yes. We even brought one machine in by express at the request of the Air Forces from Cleveland.

(Testimony of Riley J. Brett)

Q. In other words, most of the machinery you purchased was at their request rather than your own?

A. Yes, all of the production machinery was, because I don't like production machinery for myself, but it was [68] required during the war.

Q. How about the capital for the purchase of this new machinery, was that all furnished by you, or did you have Government assistance on that?

A. No assistance whatsoever.

Q. You furnished all of your own capital?

A. I did, yes.

Mr. Rosskopf: You may cross-examine.

Cross-Examination

By Mr. Wright:

Q. Mr. Brett, the profits you made, that is, that Sampson Motors, Inc. made during the fiscal year ending November 30, 1942 were actually received by the payment of the invoices, were they not?

A. The profits we earned, you mean, were received by payments of the invoices?

Q. Yes. A. I would say yes.

Q. In the course of this renegotiation over a period of time there were several auditors in your plant auditing your books? A. Just the one time.

Q. How many auditors?

A. There were two auditors, that is all there were there.

Q. There were two auditors there?

A. They were there three days, three or four days. [69]

Q. They were there three or four days?

A. Yes.

(Testimony of Riley J. Brett)

Q. They had available to them in addition to this financial statement that you have identified here the general books of account of the business of the company?

A. Yes, sir.

Q. It was after they were there that you received the letters and communications you have testified about notifying you to appear over on Beverly and again in Washington, is that right?

A. I think we had some letters before that, I am not sure. Dates are something I can't keep in my mind, Mr. Wright.

Q. I am referring to the one where they said they were going to renegotiate and wanted to give you an opportunity to appear over on Beverly Boulevard.

A. I don't know when that was. Those dates I am not sure of.

Q. You have them, Mr. Brett, don't you?

A. Do I have the dates?

Q. No, you have the letters?

A. Mr. Rosskopf may have them, I don't know.

Q. It was in 1943, you testified that the auditors were there?

A. That is right.

Q. At your place? A. Yes, sir.

Q. You stated that you received by registered mail [70] advice as follows: This appears on page 2 of this statement. I am reading now from this memorandum that counsel handed to the Court this morning and that the Court ordered filed and it is denominated "Statement of Issues and Offer of Proof:"

Following this verbal notification on May 24, 1944, the Air Forces advised Sampson by registered mail that it desired to avail Sampson "of the privilege of presenting

(Testimony of Riley J. Brett)

to them any factors pertaining to the renegotiation of your fiscal year ended 30 November 1942, inasmuch as the settlement proposed to you has not been accepted by you.

"The District Board has reserved the afternoon of Monday, 29 May 1944, to meet with you at District Headquarters, 3636 Beverly Boulevard, Los Angeles, California."

You got that registered letter of May 24, 1944. That was after the auditors had been there in 1943, wasn't it?

A. That is right.

Mr. Rosskopf: I have a copy of that letter or the original and a copy, if you desire it, and if you wish to put in the full text of it, Mr. Wright.

Mr. Wright: I don't desire to put it in because it is immaterial.

Q. You refused to enter into a discussion with the Major about a settlement of the amount of excessive profits, didn't you, Mr. Brett?

A. I asked General Stetts to give me a change from Major Schumacher and there was no use to waste any more [71] time talking to Major Schumacher. I made several endeavors.

Q. That is evasive of the question. I think your testimony was in discussing this thing with Major Schumacher he told you that you could settle it and asked you if you wanted to enter into an agreement about it.

A. That was the first visit there. He informed me that he had the power to settle right now.

Q. You told him you did not owe any excessive profits, didn't you?

A. I told him I didn't think I did.

(Testimony of Riley J. Brett)

Q. And that you were not going to agree?

A. There wasn't anything to agree on at that time, Mr. Wright.

Q. Well, after that the auditors came in?

A. I think he was there again before the auditors came. I can't recall exactly.

Q. It was after you had this conversation we are talking about—whether he was there any more or not—it was after that that the auditors came around, wasn't it?

A. Yes, it was after.

Q. It was after that you got your notice from the Beverly address that you could appear before the official over there, is that right, the one I have just read to you?

A. Yes.

Q. That was in 1944? A. Yes.

The Court: Obviously so, because he testified that [72] occurred in 1943.

Mr. Wright: I think it is admitted here that he had notice of the order. That is all, Your Honor.

The Court: Step down. Call your next witness.

Mr. True: May I ask one question?

The Court: Surely.

Cross-Examination

By Mr. True:

Q. I show you a letter, Mr. Brett, dated February 5, 1945 on the letterhead bearing the name Sampson Motors, Inc. and ask you if that is a letter which you wrote and signed and sent to Lockheed Aircraft Corporation?

A. Yes. That is my signature.

Mr. True: I would like to introduce this in evidence as an exhibit of Lockheed Aircraft Corporation and at the same time substitute a photostat therefor.

The Court: Very well. We will call it L for Lockheed. You have the stamp on that one, have you?

Mr. True: Yes, Your Honor.

The Court: Does it make any difference?

Mr. True: The received stamp is on the back of it, yes.

Mr. Roskopf: We have no objection and no objection to the substitution of a copy for the original.

Mr. Wright: What is this?

Mr. True: That is a photostat I am substituting.

Mr. Wright: I see.

Mr. True: No further questions, Your Honor. [73]

The Court: Step down. Next witness.

Mr. Roskopf: I will call Mrs. Brett.

BERTHA BRETT,

called as a witness on behalf of the defendant Sampson Motors, Inc., having been first duly sworn, testified as follows:

Direct Examination.

By Mr. Roskopf:

Q. What is your name? A. Bertha Brett.

Q. You are at the same address?

A. Yes, the same address as my husband.

Q. Are you an officer of Sampson Motors, Inc.?

A. Yes, sir.

Q. What officer are you?

A. I am secretary.

Q. How long have you been such officer?

A. Since May 4, 1942.

(Testimony of Bertha Brett)

Q. Prior to that time you were connected with Sampson Motors, Inc.?

A. No. I was just a housewife before that for seventeen years.

Q. Since May, 1942 what has been your duty? In other words, what have you done at Sampson Motors, Inc.? [74]

A. I had complete charge of the books, purchase orders and everything in the office.

Q. You were paid a salary for that, were you?

A. Yes.

Q. What salary did you draw or what compensation did you have during 1942?

A. Well, the auditor at first had a misunderstanding of a wife's duty even though she worked twelve hours a day from time to time. He thought I should not have any, so even though I was putting in overtime and had enough work for maybe two people—anyway, they finally allowed me \$35 a week, to begin with, and then it increased to—I can't remember the amount I earned for the whole year, but it was \$75 a week before the year was up, before the freeze went in.

Q. Were you present when Captain Schumacher, later Major Schumacher, came to the office of Sampson Motors, Inc. concerning renegotiation? A. Yes, sir.

Q. Were you present on more than one occasion when he was there? A. Yes.

Q. Would you say you were present on every occasion he was there?

A. I may have missed one or two conversations in between when I would have to answer the phone, because in a small office you have to answer a phone in between;

(Testimony of Bertha Brett)

but I was always on hand when he was there because I am always—[75]

Q. Will you just relate to the Court, as nearly as you can, the conversations and transactions that took place on these various occasions that he called?

A. Well, I don't remember dates and the sequences of them. That is positive. But it was mostly just conversation and wanting us to agree that we had been excessive and that we owed the Government both before the audit and afterwards. At one time, of course, he just said that he had the power to make any agreement that was to be or not to be—that was before the audit—and he also insinuated the same thing afterwards before there was any amount given to us that they had unilaterally decided upon.

Q. If you can go into a little more detail as to what was said about the business of the company and the nature of operations, and so on.

A. Well, they didn't seem to be interested whatsoever in any efficiency that we might be putting forth, and if and when they made the audit there was never any—of course, there were no letters to show them and I don't think they would look at them, anyway, because they were just the auditors that were out. But on the other hand, Mr. Moore who I don't think had anything to do with renegotiation other than to try to get us to maybe cooperate with them, but there was never any cooperation as far as wanting to know what we were doing and how we were doing it and in saving anything or any efficiency that we had.

But I went to one meeting over at the Beverly Building with Major Schumacher, but at that time there was [76]

(Testimony of Bertha Brett)

just conversation, there was nothing about any determination as to where they had obtained the \$60,000. Of course, the Internal Revenue had informed us before that how much tax reduction there would be from the excess profit that we had already paid.

Mr. Wright: May it be understood, Your Honor, that the same objection I made to the testimony of Mr. Brett applies to this witness?

The Court: So ordered.

By Mr. Rosskopf:

Q. Let us take that meeting you attended before Major Schumacher at the Beverly Boulevard office. Just give us, if you can, Mrs. Brett, exactly what happened from the time you walked into the place until you left?

A. Well, Mr. Bronley, our attorney at that time, and Mr. Brett and I went over there at Major Schumacher's invitation or insistence. He wanted Mr. Brett to shake hands with him, but he didn't. So it seemed to be a subject of personality that Major Schumacher had on his mind that afternoon and there was nothing as far as—there was no paper work he asked us to sign other than he was always asking if we were going to pay this renegotiation and sign it; that seemed to be it, but I don't know what they wanted to sign because we were never given anything to sign because we had no idea where the amounts came from or what it was. It was just a flat sum that they decided.

Q. Did you ever endeavor to ascertain how that was arrived at? [77]

A. Yes, we asked him numerous times. I don't have any copy of the telegram, but I know that Mr. Bromley repeatedly asked him where they got this. We wanted to

(Testimony of Bertha Brett)

know whether it was just straight figures that they had obtained the \$60,000 or whether it was penalty or what it was. I asked him myself if there were any figures and I asked the auditors when they left if there were any figures that we would be able to obtain to see where they figured that we were excessive.

Q. What was their answer?

A. Well, they would get around to it maybe, but that was their decision and they decided upon that, but that wasn't our affair.

Q. Were you ever present when Mr. Brett or any one else, including yourself, offered to produce evidence of efficiency, savings, and things of that nature?

A. Every time Major Schumacher was out there we wanted to show him purchase orders. The one we have today happens to be 1943. That was brought down for the stamp of the renegotiation loan merely, but they were not interested in that. And the fact that we had the letter. Of course, the other one was later. But Major Schumacher said no, that they wanted the figures and they would make their own decisions later, but he wasn't interested in it. Mr. Moore may have seen it, but as I say, he was with them just a short time and he may not have been anything but just an agent and he never had anything further to do with renegotiation. [78]

Mr. Roskopf: You may cross-examine.

Mr. Wright: No cross.

The Court: Step down. Next witness.

Mr. Roskopf: I have no further witnesses, Your Honor. I think I would like to offer more as a sample than anything else the purchase order which was current-

ly in use during that period showing the renegotiation stamp. I presume Mr. Wright will stipulate to that?

The Court: What has the renegotiation stamp to do with this?

Mr. Rosskopf: I should say in some cases it was typed in and in some cases it was put in with a rubber stamp, stating the purchase order was subject to the provisions if applicable of the Renegotiation Act of 1942.

Mr. Wright: Same objection, Your Honor. It is immaterial and is something that is not within the jurisdiction of the Court in this hearing because of the failure of Sampson Motors, Inc. to file a petition before The Tax Court.

The Court: I don't see how this is material.

Mr. Rosskopf: Probably not, Your Honor, except to show that in the course of dealings the purchase orders were given and accepted subject to the Act of 1942. Of course, the Act as it then existed would be the one that would apply to the contract. I think it would probably follow.

The Court: Well, this will be admitted. The objection will be overruled. It is Defendant's C for the purpose of [79] showing the legend relating to renegotiation. Any others?

Mr. Rosskopf: No, Your Honor.

The Court: Do you rest?

Mr. Rosskopf: The defendant Sampson Motors rests.

The Court: Lockheed?

Mr. True: I should like at this time, Your Honor, to introduce on behalf of the defendant Lockheed Aircraft Corporation three letters dated respectively 6 October, 1944, 8 January, 1945 and 9 May, 1945, each of which is an order from Robert P. Patterson, Under Secretary of War.

The Court: That was all stipulated to before you got here this morning.

Mr. Rosskopf: Yes.

Mr. True: It was? That we did receive the order?

The Court: Not the form of the order. There is no contest to the form, is there?

Mr. Rosskopf: No, Your Honor.

Mr. True: I have nothing further.

The Court: Does everybody rest?

Mr. Wright: We rest, Your Honor. [80]

* * * * *

The Court: I don't think you need to waste any time on that. As I indicated to counsel when he was arguing, maybe in The Tax Court he could have a trial *de novo* and attack all of the elements and find out what entered into it, but when it comes here on the decision of the Secretary of War, this Court must indulge in the presumption that the law has been obeyed unless there is a showing to the contrary, and there is no showing to the contrary here that he did not take into consideration all of the elements which enter into reasonableness. The Court must take judicial notice of the regulations promulgated

by the Secretary of War on June 30, 1942 as reported in the Spaulding case. In the footnote No. 4 on August 10, 1942, paragraph 7, under the heading "Determination of Excessive Profits" it goes into a long and detailed analysis of the things that must be taken into consideration to determine whether or not they are reasonable, and as the Circuit Court says in effect it is using the same method by which the Interstate Commerce Commission determines whether or not rates are reasonable. Now, I must indulge the presumption that the Secretary of War before he made his order here took all of those things into consideration, every one of them. From the evidence here, he had access to all of the books and records of the defendant Sampson Motors, Inc. in this case, so he had all of their information that was shown by the books and records, and the presumption must be indulged in by me that whatever he did was [101] regular and proper.

As against that we have only the evidence here that that should be set aside because in the gathering of the information and in making the determination, this defendant here was deprived of his right to be heard.

In that connection I suppose I should say first that I regard counsel's statement that the section which made exclusive jurisdiction of The Tax Court is not effective and not applicable to this case, that under the 1942 Act the plaintiff could and should come into a court such as this to enforce this order and was shrouded with the presumptions which I have indicated; that the defendant, however, was not precluded or foreclosed from raising

the defense which he has raised, but on the facts that he has raised I cannot conclude that he was denied due process of law, that he was granted due process of law, that his books and records were made available, all of the information that he had was made available. There is no showing in this court that anything that he would have done could have been considered by a reasonable person to have made any difference in the conclusions which were reached. The fact that he saved money for the Government, the fact that he saved \$75,000 on one order I don't think could have affected the conclusion of a reasonable person in determining whether there were or were not excessive profits, particularly in view of the fact that as against the evidence in this case the presumption which I have indicated must prevail and which is the effect of the evidence and cannot be overcome [102] except by a stronger presumption, and there is no stronger presumption here, or by stronger evidence, and there is no stronger evidence in this case. I don't think I have the power in this case to grant judgment against Sampson Motors for the amount indicated. I do think that in view of the pleadings by Lockheed Aircraft and the state of facts as they exist that this Court would be bound to consider their answer as a petition for declaratory relief as to what their rights were as to who was entitled to the money, and for that reason I think that the judgment would have to be on that petition for declaratory relief and so regarded as such, that Lockheed does not have any right and that the money does belong to the Government and that the Gov-

ernment have judgment against Lockheed for \$17,000, the amount stipulated upon, and inasmuch as the \$30.20 is not withheld that the Government have judgment against defendant Sampson Motors for \$30.20 only, plus interest from whatever date it is.

Mr. Wright: Yes. That is the prayer of the complaint, Your Honor, for \$30.20.

The Court: It is?

Mr. Wright: Yes.

The Court: Well, I don't read prayers in complaints any more in view of the fact the Supreme Court says the prayer is not a part of the complaint.

Mr. Wright: Well, that is what we ask.

The Court: Judgment will have to be as indicated. Findings will be prepared accordingly and judgment by the plaintiff.

[Endorsed]: Filed Apr. 25, 1947. [103]

[Endorsed]: No. 11644. United States Circuit Court of Appeals for the Ninth Circuit. Sampson Motors, Inc., a corporation, Appellant. vs. United States of America, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed June 3, 1947.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11644

UNITED STATES OF AMERICA,

Plaintiff and Respondent,

vs.

SAMPSON MOTORS, INC., a corporation,

Defendant and Appellant,

LOCKHEED AIRCRAFT CORPORATION, a corporation,

Defendant.

STATEMENT OF POINTS ON APPEAL AND
DESIGNATION OF RECORD.

To the Clerk of the Above Entitled Court:

The Appellant Sampson Motors, Inc., a corporation, hereby sets forth a statement of the points on which it intends to rely on the appeal and designates the parts of the record which it thinks necessary for the consideration thereof, to wit:

POINTS RAISED ON APPEAL

I.

Renegotiation Act of 1942 is unconstitutional.

II.

Unilateral determination of excess profits was void and beyond the jurisdiction of Secretary of War.

III.

Unilateral determination was arbitrary and without due process of law.

IV.

The unilateral determination by the Secretary of War has no weight as evidence, and the trial court erred in considering it as evidence.

V.

The burden of proving excess profits was on the plaintiff. The finding of excess profits is not supported by the evidence.

* * * * * * * *

Dated this 11th day of June, 1947.

ROBT. E. ROSSKOPF
Attorney for Appellant

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jun. 13, 1947. Paul P. O'Brien,
Clerk.